

**Council Member Herring offered the following, which was approved:**

**Ordinance Number 26.31.17 (As Amended)**

**AN ORDINANCE REPEALING CHAPTER 20 OF THE CODE OF THE CITY OF ALBANY, AMENDING CHAPTER 42 OF THE CODE OF THE CITY OF ALBANY (DEPARTMENTS AND COMMISSIONS), AMENDING CHAPTER 111 OF THE CODE OF THE CITY OF ALBANY (AMUSEMENTS), AMENDING CHAPTER 133 OF THE CODE OF THE CITY OF ALBANY (BUILDING CONSTRUCTION), AMENDING CHAPTER 151 OF THE CODE OF THE CITY OF ALBANY (COMMERCIAL STANDARDS), AMENDING CHAPTER 181 OF THE CODE OF THE CITY OF ALBANY (ENVIRONMENTAL QUALITY REVIEW), AMENDING CHAPTER 197 OF THE CODE OF THE CITY OF ALBANY (FIRE PREVENTION), AMENDING CHAPTER 211 OF THE CODE OF THE CITY OF ALBANY (GRADING AND MINING), AMENDING CHAPTER 231 OF THE CODE OF THE CITY OF ALBANY (HOUSING), AMENDING CHAPTER 303 OF THE CODE OF THE CITY OF ALBANY (SIDEWALK AND OUTDOOR CAFES), REPEALING CHAPTER 307 OF THE CODE OF THE CITY OF ALBANY (SIGNS), AMENDING CHAPTER 313 OF THE CODE OF THE CITY OF ALBANY (SOLID WASTE), AMENDING CHAPTER 345 OF THE CODE OF THE CITY OF ALBANY (TREES AND VEGETATION), REPEALING CHAPTER 375-1 THROUGH 197 OF THE CODE OF THE CITY OF ALBANY (ZONING) AND REPEALING THE EXISTING CORRESPONDING ZONING MAP, ADOPTING A NEW CHAPTER 375 OF THE CODE OF THE CITY OF ALBANY (CITY OF ALBANY UNIFIED SUSTAINABLE DEVELOPMENT ORDINANCE) , WITH CORRESPONDING NEW ZONING MAP, AND RENUMBERING CHAPTER 375-198 (ALBANY-COLONIE INTERMUNICIPAL ZONING OVERLAY) TO SECTION 375-2(F)(7), TO FIT WITHIN THIS NEW CHAPTER 375.**

**The City of Albany, in City Council convened, does hereby ordain and enact:**

**Section 1. Chapter 20 of the Code of the City of Albany (Buildings and Regulatory Compliance, Department of) is repealed.**

**Section 2. Chapter 42 of the Code of the City of Albany (Departments and Commissions) is amended as follows:**

[Chapter 42. Departments and Commissions](#)

[Part 4. Historic Resources Commission](#)

[Article XII. General Provisions](#)

[§ 42-82. Establishment.](#)

The Common Council, in order to preserve and protect places, sites, buildings, structures, works of art and other objects having a special character or special historic or aesthetic interest or value, does deem it in the best interest of the City of Albany that there hereby be established an Historic Resources Commission, with the powers and duties described herein.

[§ 42-83. Purpose and intent.](#)

The Historic Resources Commission shall administer the provisions of this article so as to:

A. Regulate the appearance, style and components of new construction in historic districts and of additions or alterations to landmarks or to existing structures which are visible from the public right-of-way within designated historic districts and adjacent areas.

B. Protect, preserve and enhance those places, sites, buildings, structures, objects and significant public interiors which are of special character or interest to the City of Albany.

C. Foster civic beauty.

D. Foster civic pride in the accomplishments of the past.

E. Protect and enhance the attractiveness of the City of Albany to visitors and the support and stimulus to the economy thereby provided.

F. Foster harmonious, orderly and compatible physical development within the City of Albany.

G. Safeguard and preserve the historic, cultural, architectural and archaeological heritage of the City of Albany.

#### § 42-84. Definitions.

~~The following terms and phrases shall mean and include:~~

#### ADAPTIVE REUSE

~~Conversion of a building originally designed for a certain use to a different use.~~

#### ADJACENT

~~Physically abutting an historic district or a landmark; directly or diagonally across the street from an historic district boundary or a landmark. In those cases where the historic district boundary is drawn through a portion of a block along the side property lines, the properties which continue on the remainder of the block to the next cross street will be considered "adjacent."~~

#### ALTER

~~To change one or more exterior architectural features of a landmark, an improvement on a landmark site or a structure within an historic district.~~

#### APPLICANT

~~A person, firm, partnership or corporation applying for a decision or a certificate of appropriateness.~~

#### ARCHAEOLOGICAL SITE

A. Any archaeological site on, or eligible for inclusion on, the National Register of Historic Places, or

B. Any site that contains archaeological objects and the contextual associations of the archaeological objects, located on land, including, but not limited to, submerged and submersible lands, and the bed of any river, creek, stream, etc. within the City's jurisdiction. Examples of archaeological sites include, but are not limited to: lithic quarries, camps, burial sites, lithic scatters, fortifications, house sites, and road beds.

#### CERTIFICATE OF APPROPRIATENESS

~~A certificate issued by the Historic Resources Commission or its designee approving plans for alteration, construction, removal, or demolition of a landmark or a structure within an historic district or for subsurface excavation in an area designated as archaeologically sensitive or potentially archaeologically sensitive. A certificate also may be issued for a waiver or modification of any of the criteria or standards contained in this article.~~

#### COMMISSION

~~The Albany Historic Resources Commission.~~

#### CONSTRUCTION

~~Building an addition to an existing structure, building a new principal or accessory structure, or any ground disturbance associated with such activities, including utilities installation and parking facilities.~~

#### DEMOLITION

~~Destruction or partial destruction of an improvement.~~

#### DESIGN GUIDELINE

~~A standard of appropriate activity that will preserve the historic, aesthetic, cultural and architectural character of a structure or area.~~

#### EXTERIOR

~~The architectural style, design, general arrangement and components of the outer surfaces of an improvement, as distinguished from the interior surfaces enclosed by said outer surfaces, including but not limited to the kind or texture of building materials and the type and style of windows, doors, lights, signs, sidewalks, landscaping and other such exterior fixtures.~~

#### HISTORIC DISTRICT

~~A geographically definable area, so designated pursuant to this article, which possesses a significant concentration, linkage or continuity of sites, buildings, structures or objects united historically by past events or united aesthetically by plan or development. An historic district may also comprise individual elements, separated geographically, but linked by association or history.~~

#### IMPROVEMENT

~~A building, structure, pavement, parking facility, fence, gate, wall, sign or awning, work of art or other object constructed by humans.~~

#### LANDMARK

~~Property, object or structure, or any part thereof, so designated pursuant to the provisions of this article; also referred to as an "individual site."~~

#### MAP-IDENTIFIED STRUCTURES

~~Structures or other built features which appear on historic maps or other historic documents and which may no longer exist above ground but the remains of which may exist underground as archaeological ruins.~~

#### PHASE I CULTURAL RESOURCE INVESTIGATION

~~As defined by the Standards for Cultural Resource Investigations and Curation of Archaeological Collections in New York State promulgated by the New York State Archaeological Council.~~

#### PROFESSIONAL ARCHAEOLOGIST

~~An individual possessing an appropriate level of educational achievement, expertise, and experience so as to be knowledgeable concerning relevant aspects of the archaeology, history, and culture of this City and who meets the professional qualifications standards set forth in the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation.~~

#### PROPERTY

~~Land and any improvements thereon.~~

#### STRUCTURE

~~Anything constructed or erected which requires permanent or temporary location on the ground or attachment to something permanently attached to the ground. This term shall include, but not be limited to, buildings, walls, fences, awnings, signs, billboards, lighting fixtures, screen enclosures, works of art, electronic transmission or reception devices or other electronic devices and mechanical devices related to a building function.~~

[§ 42-8584. Membership; organization; meeting; vacancies; powers and duties.](#)

A. Membership; organization; meetings; vacancies.

(1) The Historic Resources Commission shall consist of nine members, who shall be appointed by the Mayor of the City of Albany with the advice and consent of the Common Council. All Commission members shall have a demonstrated interest, competence or knowledge of historic preservation and archaeology, at least two of whom shall be professional archaeologists. To the extent that such professionals are available in the community, Commission members shall be drawn from among the disciplines of history, architectural history, architecture, historic architecture, planning, archaeology, historic preservation or closely related fields.

(2) Three of the initial members shall be appointed for one year, two for two years and two for three years. Subsequently, members shall be appointed for terms of three years as terms expire. Members of the Commission may be reappointed for succeeding terms.

(3) The Mayor shall designate one member as Chairman of the Commission and one member as Vice Chairman. The Vice Chairman shall act in the absence of the Chairman.

(4) The presence of five members of the Commission shall constitute a quorum. The concurring vote of five members shall be required to carry out an action of the Commission.

(5) A vacancy occurring in the membership of the Commission for any cause shall be filled by a person appointed by the Mayor for the unexpired term.

(6) The Commission shall meet as often as is necessary to discharge its duties in a timely fashion, but at least eight times per year.

B. The powers of the Commission shall include:

(1) Delegation of administrative and procedural matters to staff and professional consultants as necessary to carry out the duties of the Commission. ~~The City Planning Office shall be responsible for the day-to-day administration of this article. The Commission shall adopt, by resolution, rules and regulations which establish specific administrative procedures to be followed by the Planning Office.~~

(2) Consultation with individuals or groups in the carrying out of its duties.

(3) Adoption of rules and regulations necessary to establish criteria and standards for the conduct of its business or necessary to carry out the provisions of this article.

(4) Adoption of criteria for the identification of significant historic, architectural, archaeological and cultural landmarks and for delineation of historic districts.

(5) Conduct of surveys of significant historic, architectural, archaeological and cultural landmarks and historic districts within the City.

(6) Recommending to the Common Council the designation of identified structures or sites as landmarks or historic districts and making recommendations regarding nominations for listing on the National Register of Historic Places.

(7) Approval, approval with modifications or denial of certificates of appropriateness pursuant to this article.

(8) Regulation of development within areas adjacent to historic districts. The Commission shall limit its review of such development to new construction, signage and site improvements.

(9) Increasing public awareness of the value of historic, cultural, archaeological and architectural preservation by developing and participating in public education programs.

(10) Making recommendations to City government concerning the utilization of state, federal or private funds to promote the preservation of landmarks and historic districts within the City.

(11) Maintenance of central files for the City on all historic surveys and designations prepared for City, state or federal programs.

(12) Review development plans which involve potential archaeological sites, cause to be conducted preliminary assessments of the potential archaeological significance of any site plan area and of the impact of any proposed ground-disturbing activities on such area, and make recommendations as to the necessity of cultural resource investigations.

~~§ 42-86. Areas and structures designated as having special historic and aesthetic interest or value.~~

~~A. Amendments to existing districts and the boundaries of any historic districts designated henceforth shall be specified in detail and shall be filed in the City Clerk's office for public inspection.~~

~~B. Pursuant to § 96-a of the General Municipal Law, the following described areas are designated as areas, buildings, structures and objects having a special historical or aesthetic interest or value:~~

~~(1) Districts:~~

~~(a) Pastures Historic District:~~

~~[1] Madison Avenue: 82-104 (even only).~~

~~[2] Bleecker Street: all.~~

~~[3] Herkimer Street: all.~~

~~[4] Westerlo Street: 36-76; 47-77.~~

~~[5] South Ferry Street: all.~~

~~[6] Green Street: 101-151; 118-144.~~

~~(b) Washington Park Historic District:~~

~~[1] South Lake Avenue: 22; 37-89.~~

~~[2] Thurlow Terrace: all.~~

~~[3] Englewood Place: all.~~

~~[4] Western Avenue: 76.~~

~~[5] Willett Street: all.~~

~~[6] State Street: 375-503.~~

~~[7] Northern Boulevard: 1.~~

~~[8] Madison Avenue: 469; 721-725; 462-718.~~

~~[9] Henry Johnson Boulevard: 5, 7, 9, 11, 15, 17.~~

~~[10] Sprague Place: 1, 2, 3, 4, 5.~~

~~[11] Spring Street: 74, 76, 77, 78, 79, 80, 81, 82, 83, 87, 89, 90, 92, 95, 99.~~

~~(c) Lafayette Park Historic District:~~

~~[1] Elk Street: 1-37.~~

~~[2] Columbia Street: 77-107.~~

~~[3] Columbia Place: all.~~

~~[4] Albany County Courthouse.~~

~~[5] New York State Court of Appeals.~~

~~[6] Albany City Hall.~~

~~[7] New York State Capitol.~~

~~[8] New York State Education Building.~~

~~[9] Cathedral of All Saints.~~

~~(d) Ten Broeck Historic District:~~

~~[1] Ten Broeck Street: all.~~

~~[2] First Street: 2-76; 35-79.~~

~~[3] Second Street: 12-44; 13-53.~~

~~[4] Ten Broeck Place: all.~~

~~[5] North Swan Street: 32-96; 19-79.~~  
~~[6] North Hawk Street: 79-87; 80-90.~~  
~~[7] Hall Place: all.~~  
~~[8] St. Joseph's Terrace: all.~~  
~~(e) Downtown Albany Historic District.~~  
~~[1] Beaver Street: all.~~  
~~[2] Broadway: 351-575; 324-610.~~  
~~[3] Columbia Street: 46-54; 39-75.~~  
~~[4] Howard Street: all.~~  
~~[5] Hudson Avenue: 29-31.~~  
~~[6] James Street: 52-54.~~  
~~[7] Maiden Lane: all.~~  
~~[8] Lodge Street: all.~~  
~~[9] North Pearl Street: 11-87; 18-90.~~  
~~[10] Pine Street: all.~~  
~~[11] Sheridan Avenue: 4-12.~~  
~~[12] State Street: 35-125; 38-144.~~  
~~[13] Grand Street: 2-14 (even only).~~  
~~(f) Center Square/Hudson Park Historic District.~~  
~~[1] Alfred E. Smith State Office Building.~~  
~~[2] South Swan Street: 90-184.~~  
~~[3] Dove Street: 22-168; 23-169.~~  
~~[4] Lark Street: 200-306; 195-325.~~  
~~[5] Delaware Avenue: 4-62; 21; 25.~~  
~~[6] Spring Street: 2-72 (even only).~~  
~~[7] State Street: 244-360; 249-373.~~  
~~[8] Chestnut Street: 58-176; 59-167.~~  
~~[9] Lancaster Street: 110-222; 111-225.~~  
~~[10] Jay Street: 142-226; 121-231.~~  
~~[11] Hudson Avenue: 234-374; 269-383.~~  
~~[12] Hamilton Street: 289-411; 334-410.~~  
~~[13] Garden Alley: all.~~  
~~[14] Madison Avenue: 324-462; 327-467.~~  
~~[15] Jefferson Street: all.~~  
~~[16] Elm Street: 182-288; 175-275.~~  
~~[17] Irving Street: all.~~  
~~[18] Myrtle Avenue: 150-238; 147-221.~~  
~~[19] Park Avenue: 203-257 (odd only).~~  
~~(g) Mansion Historic District.~~  
~~[1] Hamilton Street: 114-140 (even only).~~  
~~[2] Van Zandt Street: all.~~  
~~[3] Madison Avenue: 112-180; 115-173.~~  
~~[4] Madison Place: all.~~  
~~[5] Elm Street: 1-59; 2-68.~~  
~~[6] Bleecker Place: all.~~  
~~[7] Wilbur Street: all.~~

~~[8] Myrtle Avenue: 10-52; 1-55.~~  
~~[9] Park Avenue: 7; 9; 45-71; 32-72.~~  
~~[10] Ashgrove Place: all.~~  
~~[11] Westerlo Street: 80-90; 83-95.~~  
~~[12] South Pearl Street: 115-243 (odd only).~~  
~~[13] Trinity Place: 6-80 1/2; 1-47.~~  
~~[14] Grand Street: 47-149; 62-140.~~  
~~[15] Philip Street: all.~~  
~~[16] Eagle Street: 131-183 (odd only).~~  
~~(h) South End/Groesbeckville Historic District.~~  
~~[1] Alexander Street: 1-69; 2-64.~~  
~~[2] Bassett Street: School 1; 81-83; 48-76.~~  
~~[3] Broad Street: 45-159; 40-190.~~  
~~[4] Catherine Street: 1-45; 2-46.~~  
~~[5] Clinton Street: 15-151; 34-154.~~  
~~[6] Delaware Street: 1-39; 2-48.~~  
~~[7] Elizabeth Street: all.~~  
~~[8] Fourth Avenue: 105-153; Firehouse; Bathhouse; 100-152.~~  
~~[9] Franklin Street: St. Ann's/St. John's Church and Center; 120-150; 159-169.~~  
~~[10] Morton Avenue: 2-84 (even only).~~  
~~[11] Osborne Street: 1-15 (odd only).~~  
~~[12] Plum Street: 55-65; 52-56.~~  
~~[13] Schuyler Street: 97 John Howe Library; 84-108.~~  
~~[14] Second Avenue: 1-59; 2-58.~~  
~~[15] South Pearl Street: 289-477; 298-338.~~  
~~[16] Stephen Street: all.~~  
~~[17] Teunis Street: all.~~  
~~[18] Third Avenue: 1-69; 2-82.~~  
~~(i) Clinton Avenue/North Pearl Street/Clinton Square.~~  
~~[1] Clinton Avenue: 19-613; 22-610.~~  
~~[2] North Pearl Street: 168-250; 201-243.~~  
~~[3] Clinton Square: all.~~  
~~(j) Lexington Avenue Historic District.~~  
~~[1] Lexington Avenue: 7-31; 6-36.~~  
~~(k) Elberon Triangle Historic District.~~  
~~[1] Elberon Place: 3-63 (odd only).~~  
~~[2] South Lake Avenue: 11-51 (odd only).~~  
~~[3] Western Avenue: 146-214 (even only).~~  
~~[4] Quail Street: 198-210 (even only).~~  
~~(l) South Pearl Street Commercial Row.~~  
~~[1] South Pearl Street: 36-64.~~  
~~(m) Lark Street Historic District.~~  
~~[1] Lark Street: 97-161 1/2; 100-164.~~  
~~[2] Elk Street: 169-187 (odd only).~~  
~~(n) South Lake Avenue Historic District. The proposed South Lake Avenue Historic District has the following boundaries:~~



~~[1] Northerly: the southerly property lines of 702 through 718 Madison Avenue.~~

~~[2] Easterly: the easterly property lines of 100 through 124 South Lake Avenue, then the westerly side of South Lake Avenue from the northerly side of Myrtle Avenue to the northerly side of Woodlawn Avenue.~~

~~[3] Southerly: the northerly side of Myrtle Avenue (the southerly property line of 124 South Lake Avenue) and the northerly side of Woodlawn Avenue (the southerly property line of 161 South Lake Avenue).~~

~~[4] Westerly: the westerly property lines of 99 through 161 South Lake Avenue.~~

~~(o) Upper Madison Avenue Historic District. The proposed Upper Madison Avenue Historic District has the following boundaries:~~

~~[1] Southerly: the northerly side of Yates Street.~~

~~[2] Westerly: the easterly side of Quail Street (the westerly property line of 774 and 775 Madison Avenue).~~

~~[3] Northerly: the northerly property lines of 727 through 775 Madison Avenue with two exceptions: that portion of 741 Madison Avenue located between the northerly property line of 737 Madison Avenue and the southerly side of Hamilton Street is not included; and only that portion of 727 Madison Avenue within 150 feet of the northerly boundary (that segment between the westerly property line of 737 Madison Avenue and the westerly property line of 725 Madison Avenue) is located parallel to and 150 feet distant from the northerly side of Madison Avenue.~~

~~[4] Easterly: the westerly property lines of 725 and 718 Madison Avenue and 99 South Lake Avenue.~~

~~(p) Washington Avenue Extension Historic District: 1455 and a portion of 1375. Beginning at a point in the southerly bounds of lands of the State of New York, Interstate Route 504 (I-90), Fuller Road to Everett Road, said point being 82.08 feet distant on a bearing of south 62 degrees 32 minutes 28 seconds east from a point bend in said southerly bounds of lands of the State of New York, Interstate Route 504 (I-90), Fuller Road to Everett Road, as shown on a map entitled "Map showing property line and easements for No. 1455 and a portion of No. 1375 Washington Avenue," prepared by Hershberg and Hershberg, dated 9-6-1994, with revisions dated 11-8-1994 and 2-17-1995; <sup>[1]</sup> thence south 62 degrees 32 minutes 28 seconds east along the southerly bounds of lands of the State of New York, Interstate Route 504 (I-90), Fuller Road to Everett Road, Map No. 530, Parcel 651, a distance of 96.74 feet to a point; thence south 38 degrees 07 minutes 03 seconds east a distance of 122.29 feet to a point; thence south 42 degrees 29 minutes 50 seconds east a distance of 933.94 feet to a point; thence south 47 degrees 30 minutes 10 seconds west 40.00 feet to a point; thence north 42 degrees 29 minutes 50 seconds west a distance of 527.60 feet to a point; thence south 47 degrees 30 minutes 10 seconds west 30.00 feet to a point; thence north 42 degrees 29 minutes 50 seconds west a distance of 200.00 feet to a point; thence north 47 degrees 30 minutes 10 seconds east 30.00 feet to a point; thence north 42 degrees 29 minutes 50 seconds west a distance of 207.87 feet to a point; thence north 38 degrees 07 minutes 03 seconds west a distance of 211.90 feet to the point and place of beginning.~~

~~[1] Editor's Note: Said map is on file in the City offices.~~

~~(2) Individual listings.~~

~~(a) Schuyler Mansion, 32 Catherine Street.~~

~~(b) Albany Academy Building, Academy Park.~~

~~(c) Albany Union Station, 575 Broadway.~~

~~(d) Cherry Hill, 523 1/2 South Pearl Street.~~

~~(e) New York State Executive Mansion, 138 Eagle Street.~~



~~(f) New York State Capitol, Eagle Street.~~  
~~(g) New York State Court of Appeals Building, Eagle Street.~~  
~~(h) New York State Education Building, 31 Washington Avenue.~~  
~~(i) Whipple Cast and Wrought Iron Bowstring Truss Bridge, 1000 Delaware Avenue.~~  
~~(j) Ten Broeck Mansion, 9 Ten Broeck Place.~~  
~~(k) Old Post Office, Broadway.~~  
~~(l) Delaware and Hudson Railroad Building, Broadway.~~  
~~(m) St. Peter's Church, State and Lodge Streets.~~  
~~(n) Quackenbush House, 683 Broadway.~~  
~~(o) Albany City Hall, Eagle Street.~~  
~~(p) First Trust Company Building, 35 State Street.~~  
~~(q) First Reformed Church, North Pearl and Orange Streets.~~  
~~(r) Cathedral of All Saints, South Swan and Elk Streets.~~  
~~(s) United Traction Company Building, 600 Broadway.~~  
~~(t) Cathedral of the Immaculate Conception, Eagle Street and Madison Avenue.~~  
~~(u) Albany Institute of History and Art, 125 Washington Avenue.~~  
~~(v) James Hall's Office, Lincoln Park.~~  
~~(w) St. Mary's Church, Pine and Lodge Streets.~~  
~~(x) Church of the Holy Innocents, North Pearl and Colonie Streets.~~  
~~(y) Young Men's Christian Association, 60 North Pearl Street.~~  
~~(z) Palace Theatre, 19 Clinton Avenue.~~  
~~(aa) Abrams Building, South Pearl Street and Hudson Avenue.~~  
~~(bb) Knickerbocker and Arnink Garages, Hudson Avenue.~~  
~~(cc) Benjamin Arnold House (465 State Street) and Carriage House (307 Washington Avenue).~~  
~~(dd) Quackenbush Pumping Station—Albany Waterworks, Quackenbush Street.~~  
~~(ee) 48 Hudson Avenue.~~

§ 42-87. Designation of landmarks or historic districts.

A. The Commission may recommend designation of an individual property as a landmark if it:

- ~~(1) Possesses special character or historic, aesthetic or archaeological interest or value as part of the cultural, political, economic or social history of the locality, region, state or nation;~~
- ~~(2) Is identified with historic personages;~~
- ~~(3) Embodies the distinguishing characteristics of a cultural period or an architectural style;~~
- ~~(4) Is the work of a designer whose work has significantly influenced an age; or~~
- ~~(5) Represents an established and familiar visual feature of the neighborhood due to a unique location or singular physical characteristic.~~

B. The Commission may recommend designation of a group of properties as an historic district if:

- ~~(1) A majority of the properties meets one or more of the criteria for designation of a landmark;~~
- or

- ~~(2) The area constitutes a significant and distinguishable entity whose components may lack individual distinction.~~

C. Notice of a proposed designation shall be sent by registered mail to the owner of each property proposed for designation or located adjacent to a property proposed for designation, describing the property and announcing a public hearing by the Commission to consider the designation. Where the proposed designation involves so many properties that individual notice to affected owners is impractical, notice may instead be published at least twice in a newspaper

of general circulation at least 10 days prior to the date of the public hearing. Once the Commission has issued notice of a proposed designation, no building permit for work in the affected area shall be issued by the Commissioner of Buildings and Regulatory Compliance until the Common Council has approved or disapproved the designation, unless the Commission has reviewed the permit request according to the procedures and criteria for a certificate of appropriateness.

D. The Commission shall hold a public hearing before recommending designation of any landmark or historic district. The Commission, owners of affected property and any other interested parties may present testimony or documentary evidence at the hearing regarding the historic, architectural or cultural importance of the proposed landmark or historic district. Such testimony or evidence shall be included in the record of the hearing. The record may also contain staff reports, public comments or other evidence offered outside of the hearing.

E. The Commission shall supply the City Clerk's office with a notice and explanation of its recommendation of designation of a landmark or historic district. Such notice shall include a description of each property proposed for landmark designation or the boundaries of each proposed historic district.

F. The City Clerk shall cause the Commission's recommendation to be presented to the Common Council at its next scheduled meeting.

G. After the Commission's recommendation is presented, the Common Council may approve or disapprove the proposed designation of a landmark or historic district and shall set forth its specific reasons for approval or disapproval.

H. Upon Common Council approval of a designation, a list of the landmarks or historic districts designated shall be filed with the City Clerk, the Director of Planning, the Commissioner of Buildings and Regulatory Compliance, the City Engineer and the Albany County Hall of Records.

I. Notice of a designation shall be sent to the owner of each property that is designated or located adjacent to a designated property. Where the designation involves so many properties that individual notice to affected owners is impractical, notice may instead be published at least twice in a newspaper of general circulation.

#### § 42-88. Areas designated as archaeologically sensitive.

A. Fort Orange/Downtown Albany Archaeological Review District. These archaeologically sensitive areas of the City of Albany are deemed to have special archaeological significance by virtue of their location within the earliest settled portion of the City, which was comprised of a 17th Century stockaded community and certain surrounding areas. This special archaeological district is designated on a map titled the "Downtown Albany Archaeological District and Fort Orange," dated April 4, 1988, and filed in the City Clerk's office. Any applicant proposing subsurface excavation in these areas should be aware that a cultural resource survey (hereinafter also referred to as a "Phase IA Cultural Resource Investigation") is required and shall be performed as part of the environmental and site plan review set forth in § 375-32 et seq. of this Code.

B. Secondary Downtown Albany Archaeological Review District. This area is also considered archaeologically sensitive because it is supportive to the Downtown Albany Archaeological District and Fort Orange areas by reason of proximity, similar street configuration and an interspersing of similar structures. Any applicant proposing subsurface excavation in this area should be aware that at a minimum a Phase IA Cultural Resource Investigation is required and shall be performed as part of the environmental and site plan review set forth in § 375-32 et seq.

of this Code. Projects in this area are subject to § ~~42-91C(4)~~ (guidelines for new construction in or adjacent to the Downtown Historic District) and § ~~42-94B~~ (demolition requirements). The Secondary Downtown Review District is comprised as follows: Starting at a point in Madison Avenue beneath Interstate 787; continuing west on Madison Avenue (including the north side) to Grand Street; continuing north on Grand Street (including the east side) to Beaver Street; continuing west on Beaver Street (including the north side) to Wendell Street; continuing north on Wendell Street (including the east side) to Howard Street; continuing west on Howard Street (including the north side) to Eagle Street; continuing north on Eagle Street (including the east side) to Columbia Street; continuing east on Columbia Street (including the south side) to North Pearl Street; continuing north on North Pearl Street (including the east side) to Orange Street; continuing east on Orange Street (including the south side) and along the entrance ramp to Interstate 787; continuing south along Interstate 787 and Broadway to the point of beginning in Madison Avenue. A map of this area, dated April 4, 1988, is filed in the office of the City Clerk and shall be referred to as "Map 2." It should be noted that all properties located within the Secondary Downtown Review District that have been designated as landmarks or are included in an historic district are subject to all the provisions of this article.

~~C. Uptown Albany Archaeological Review District. This area of potential archaeological sensitivity includes all of the rest of the land within City limits but not within the Fort Orange/Downtown and Secondary Downtown Albany Archaeological Review Districts. Within this area, archaeological sensitivity is determined by the presence of known archaeological sites within one-half mile of the proposed project area, environmental factors such as the presence of watersheds for prehistory and map identified structures from historic maps and other documents. Any applicant proposing subsurface excavation in this area should be aware that a Phase IA Cultural Resource Investigation may be required and have to be performed as part of the environmental and site plan review set forth in § ~~375-32~~ et seq. of this Code if deemed appropriate by the City Archaeologist. A map of this area, with archaeological sensitivity indicated, shall be filed in the Office of the City Clerk and shall be referred to as "Map 3."~~

#### § 42-8985. Opinion of Commission.

In the event that the Commission is not the lead agency for the environmental review process, the opinion of the Commission, as an involved agency, shall be sought for all applications under this article.

#### § 42-9086. Certificate of appropriateness.

A. Certificate of appropriateness and building permit required. No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction or moving of a landmark or a property within an historic district, nor shall any person make any material change in the appearance of such a property or its windows, light fixtures, signs or awnings, sidewalks, fences, steps, paving or other exterior elements visible from a public street or alley, nor shall any person carry out any subsurface excavation in any area of archaeological sensitivity or potential archaeological sensitivity without first obtaining a certificate of appropriateness and a building permit. No person shall carry out any grading or roadwork without first obtaining a certificate of appropriateness and grading or roadwork permit.

B. Building, grading, and roadwork permit requirements.

(1) No permit for signage, new construction, repair, alteration, a sidewalk barricade, demolition or any other work that will affect the exterior of a landmark or a property within an historic district, and no permit for subsurface excavation in any area of archaeological sensitivity or potential archaeological sensitivity shall be issued by the Commissioner of Buildings and

Regulatory Compliance until the applicant has obtained a certificate of appropriateness. No permit for grading or roadwork shall be issued by the City Engineer until the applicant has obtained a certificate of appropriateness. Any application for a permit for such work shall be referred to the City Planning Office.

(2) Additional requirements. In addition to the documentation normally required as part of a building, grading, or roadwork permit application, an application for work that will affect the exterior of a landmark or a property included in an historic district also shall include the following:

(a) One copy of photographs of the property showing all sides that are visible from the public right-of-way.

(b) For major changes on facades or new construction, three copies of frontal elevations, including the relationship with adjacent properties. Perspective drawings may be recommended or required.

(c) Two samples of each color and type of material to be used.

(d) For proposed work, including signs, awnings or lettering, three copies of a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used and the method of illumination. two copies of an elevation or photo showing the location of the sign, awning or lettering on the property also shall be submitted.

(e) Any other information which the Commission may deem necessary in order to visualize the proposed work.

(f) For proposed new construction in an historic district, the submission requirements established under § 42-91C(3)(j) shall apply.

(g) Required photos, plans and drawings will not be returned.

~~C. Certificate of appropriateness: procedures and requirements.~~

~~(1) All applications for permits for work involving any exterior alteration, restoration, reconstruction, demolition, new construction or moving of a landmark or a property within an historic district, any material change in the appearance of such a property or its windows, light fixtures, signs or awnings, sidewalks, fences, steps, paving or other exterior elements visible from a public street or alley, any subsurface excavation in any area of archaeological sensitivity or potential archaeological sensitivity, or any grading or roadwork, which are filed with the Buildings Department, shall be referred by the Buildings Department to the City Planning Office for review. Once referred to the City Planning Office, all such applications except those for permits for subsurface excavation in any area of archaeological sensitivity or potential archaeological sensitivity shall be reviewed by a City Planning Office staff member with a knowledge of and interest in historic preservation. All applications for permits for subsurface excavation in any area of archaeological sensitivity shall be reviewed by the City Archaeologist.~~

~~(2) Application form.~~

~~(a) An application form shall be required from the applicant before Commission review of a proposal. The application shall include, but not be limited to, the following information about the proposed project:~~

~~[1] Location.~~

~~[2] Description of the proposed work.~~

~~[3] Name, address and telephone number of the following individuals: contractor, property owner, developer, architect and applicant.~~

~~(b) The signature of both the owner of record and the applicant, if different, shall be required. An application will not be considered valid without the signature of the owner of record.~~

(3) Review of applications.

(a) Review of applications for permits for subsurface excavation in any area of archaeological sensitivity. The review of the excavation required by this section is a preliminary archaeological assessment conducted by the City Archaeologist. If, at the conclusion of the preliminary archaeological assessment, the City Archaeologist determines either that the project area has no substantial archaeological significance, or that the proposed construction or development will not have a substantial adverse impact on any known or potential archaeological resources, the City Archaeologist shall recommend to the Historic Resources Commission that it issue a certificate of appropriateness. If, at the conclusion of the preliminary archaeological assessment, the City Archaeologist determines that the site has potential archaeological significance and that the proposed development will have a substantial adverse impact on any known or potential archaeological resources, the applicant shall submit a Phase I Cultural Resource Investigation for further review by the City Archaeologist prior to his or her recommendation to the Commission that it issue a certificate of appropriateness.

(b) Review of applications for permits for subsurface excavation in any area of potential archaeological sensitivity. The review of the excavation required by this section is a preliminary archaeological assessment conducted by the City Archaeologist. If, at the conclusion of the preliminary archaeological assessment, the City Archaeologist determines either that the project area has no substantial archaeological significance, or that the proposed construction or development will not have a substantial adverse impact on any known or potential archaeological resources, the City Archaeologist shall recommend to the Director of Planning that he or she issue a certificate of appropriateness, and the Director of Planning is so authorized to issue without review said certificate. If, at the conclusion of the preliminary archaeological assessment, the City Archaeologist determines that the site has potential archaeological significance and that the proposed development will have a substantial adverse impact on any known or potential archaeological resources, the applicant shall submit a Phase I Cultural Resource Investigation for further review by the City Archaeologist prior to his or her recommendation to the Commission that it issue a certificate of appropriateness.

(c) Review of all other applications for permits contemplated by this section. After review, the Director of Planning or his/her designee may issue, with or without modifications, a certificate of appropriateness for any proposal which involves minor alterations, as defined by the Commission, which are consistent with the review criteria established under § 42-91 and with the spirit and intent of this article. If the Director of Planning or his/her designee declines to approve a minor proposal, it may be referred to the Commission for review upon request of the applicant. Any proposal which involves major alterations or repairs, as defined by the Commission, and/or new construction shall be referred by the Planning Office to the Commission for review and a determination.

(4) After reviewing an application, the Commission shall make a decision within 45 days of the determination that the application is complete, except that upon a vote of the Commission to hold a public hearing or upon notification of the Commissioner of Buildings and Regulatory Compliance that additional time is necessary for consideration and review, the Commission shall have a forty five-day extension to make its decision. The Commission may hold a public hearing on the application at which an opportunity will be provided for public comment. In the event that no decision is made by the Commission within the allotted time, the permit may be issued without a decision of the Commission.

~~(5) Each decision of the Commission shall be in writing and, if an approval with or without conditions or modifications, shall be in the form of a certificate of appropriateness. Copies of the decision shall be sent to the applicant and to the Commissioner of Buildings and Regulatory Compliance, and a copy shall be filed in the Planning Office for public inspection. The Commission's decision shall state the reasons for denying or modifying any application.~~

~~(6) A certificate of appropriateness is valid for a period of one year from the date of issue. An applicant may request an extension of this period from the Commission.~~

~~§ 42-91. Criteria in consideration of appropriateness.~~

~~A. In considering the appropriateness of a project in an area designated as archaeologically sensitive or potentially archaeologically sensitive, the City Archaeologist shall conduct a preliminary archaeological assessment and consider whether the site has potential archaeological significance or whether the proposed development will have a substantial adverse impact on any known or potential archaeological resources. If, at the conclusion of the preliminary archaeological assessment, the City Archaeologist determines either that the project area has no substantial archaeological significance, or that the proposed construction or development will not have a substantial adverse impact on any known or potential archaeological resources, the City Archaeologist shall recommend to the Director of Planning that a certificate of appropriateness to that effect be issued. If, at the conclusion of the preliminary archaeological assessment, the City Archaeologist determines that the site has potential archaeological significance and that the proposed development will have a substantial adverse impact on any known or potential archaeological resources, the applicant shall submit a Phase I Cultural Resource Investigation and reports for any additional phases of cultural resource investigations as needed for further review by the City Archaeologist prior to his or her recommendation to the Commission that a certificate of appropriateness be issued. The Historic Resources Commission shall implement the City Archaeologist's recommendation as to the issuance of a certificate of appropriateness except to the extent that the Commission rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would be contrary to law or would be contrary to the purpose and intent of this article as set forth in § 42-83.~~

~~B. In considering the appropriateness of proposed actions which do not involve potential archaeological sites, the Commission shall only consider changes that are visible from the public right-of-way and shall apply the following guidelines, standards and criteria. These standards are divided into the following categories:~~

~~(1) General guidelines.~~

~~(2) Rehabilitation guidelines.~~

~~(3) New construction guidelines.~~

~~(4) Guidelines for new construction in or adjacent to the Downtown Albany Historic District.~~

~~(5) Miscellaneous guidelines (accessory structures and signs).~~

~~C. Enumeration of guidelines.~~

~~(1) General guidelines.~~

~~(a) The general design and character of the proposed alteration or new construction should be compatible with the building and historic district.~~

~~(b) The scale of the proposed alteration or new construction should relate to the building itself, surrounding buildings, the neighborhood and the historic district.~~

~~(c) Texture, materials and color should relate to similar features of other structures in the neighborhood.~~



~~(d) Changes should be visually compatible with surrounding buildings, including the proportion of the building's front facade, the proportion and arrangement of windows and other openings within the facade, the roof shape and the rhythm and spacing of buildings on streets, including setbacks.~~

~~(e) Compatible materials and colors which are either similar to or visually quiet in relation to traditional ones used in the area should be used in new construction or when restoration of original materials is impossible. Inappropriate contemporary materials, including those which attempt fake antiquity or rusticity (e.g., unpainted natural wood, reused common brick, undressed stone or asphalt, aluminum or vinyl siding), are discouraged and are specifically prohibited on front facades and within front setback areas. When appropriate traditional materials cannot be duplicated, preference should be given to contemporary materials, used in a straightforward manner, which blend well with the traditional context of the district.~~

~~(f) Grounds for considering a proposed design inappropriate would include arresting and spectacular effects, violent contrasts of materials or colors or intense colors or a multiplicity or incongruity of details resulting in a disturbing appearance.~~

~~(2) Rehabilitation guidelines. The following standards for rehabilitation and guidelines for rehabilitating historic buildings are adopted by the Historic Resources commission to the extent that they affect exterior alterations:~~

~~(a) Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of the building, structure or site and its environment.~~

~~(b) The distinguishing original qualities or character of a building, structure or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided whenever possible.~~

~~(c) All buildings, structures and sites shall be recognized as products of their own time. Alterations that have no historic basis and which seek to create an earlier appearance shall be discouraged.~~

~~(d) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.~~

~~(e) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.~~

~~(f) Deteriorated architectural features shall be repaired rather than replaced whenever possible. In the event that replacement is necessary, the new material should match the material being replaced in composition, design, color, texture and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplication of features, substantiated by historic, physical or pictorial evidence, rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.~~

~~(g) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting, pressure grit washing and other cleaning methods that will damage the historic building materials shall not be undertaken.~~

~~(h) Every reasonable effort shall be made to protect and preserve archaeological resources affected by or adjacent to any project.~~

~~(i) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historic, architectural or cultural material and when such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.~~



~~(j) Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.~~

~~(k) Windows.~~

~~[1] Original windows should be repaired rather than replaced whenever possible.~~

~~[2] A replacement window should match the size of the original opening in width, length and depth of placement and should be constructed in the configuration of the existing or original window (i.e., double hung sash, 2/2, 6/1, 6/6, etc.). In the event that a previously altered, noncompatible window is being replaced on a street facing facade, the new window should conform with the original opening and be of a style, color and material appropriate to the building. When there is no evidence of the original window, the new one should be complementary to the building design.~~

~~[3] The use of interior storm windows is encouraged, but exterior metal or vinyl storm windows the same size as the opening and of an appropriate color are acceptable.~~

~~(l) Stoops.~~

~~[1] Brownstone stoops should be repaired rather than replaced. In the event that portions must be replaced, repair materials should match the color of and closely resemble the existing materials. Replacements for brownstone stoops should be of stone or be entirely cast in tinted concrete and should match the color, placement, size, scale and design of originals as closely as possible.~~

~~[2] Replacement wooden stoops should match the size, scale, design and placement of the originals or should be appropriate to the original design of the buildings to which they are attached. Each stoop should be painted with a color appropriate to the individual building and the surrounding district.~~

~~[3] The consistent rhythm of projecting entrance stoops is an important characteristic of the streetscape in historic areas and should be maintained.~~

~~(m) Rails. When appropriate, original wrought iron rails should be retained when new stoops are built. In the event that a rail is missing, the new rail should be custom made to be compatible with the style of the building or the surrounding district, where practicable, or be a modern nondecorative rail or a salvaged historic rail appropriate to the style of the building.~~

~~(n) Paint and other materials.~~

~~[1] Retention and/or restoration of old materials and original colors is encouraged, if at all possible. Removal or covering over, including painting, of old materials is to be avoided whenever practicable.~~

~~[2] Historically, Albany common brick was painted; therefore, it should be painted. Harder pressed or face brick was not painted; therefore, these types of brick should be left unpainted.~~

~~[3] All exterior paint colors shall be selected by the applicant or the owner. Such color selections shall be reviewed by the Planning Director or his/her designee for consistency with the provisions of this article. A paint application review form, which is available in the City Planning Office or the Building Department, must be completed and submitted, with paint chips, to the City Planning Office.~~

~~(o) Doors. Original doors should be repaired rather than replaced whenever possible. A replacement door should be constructed to fit the entire original opening in length, width, depth of placement and style or configuration.~~

~~(3) New construction guidelines. These guidelines apply to new construction in historic districts with primarily residential and neighborhood commercial character, including all but the Downtown Albany Historic District.~~

~~(a) New construction shall be compatible with the architectural scale, massing, volume and styles existing in the historic district.~~

~~(b) Materials.~~

~~[1] Compatible materials and colors which are either similar to or visually quiet in relation to the traditional ones used in the area should be utilized in new construction.~~

~~[2] Inappropriate contemporary materials, including those which attempt fake antiquity or rusticity, shall be discouraged. When appropriate traditional materials cannot be utilized, preference should be given to contemporary materials used in a straightforward manner which at the same time are not conspicuous in the traditional context of the district.~~

~~[3] Material selection for new buildings should reflect consideration of the historic district and adjacent historic buildings. In order to retain the visual integrity of the area, contemporary materials, such as glass, curtain walls, concrete, etc., are acceptable, provided that the overall texture, color and detail of the building facade are visually quiet and compatible with the historic district.~~

~~(c) Facade openings.~~

~~[1] The combined area of openings in the principal plane of the facade should not exceed one-third (1/3) of the overall facade. It should also be noted that end row or corner sited buildings will be subject to review of both the principal and secondary facades, and submission requirements referred to in Subsection B(3)(j) of this section will pertain to both facades.~~

~~[2] Repetitive openings should be proportioned so that the height is at least twice the width but not more than three times the width. Basement and attic windows of small area may be excluded from this restriction. The height to width ratio of a single architectural feature, such as a door opening, a bay window or one feature window, may be reduced to 1:1.~~

~~(d) Facade rhythm and proportion.~~

~~[1] By manipulation of architectural features, the rhythm of separate building units existing on a street of attached rowhouses is to be carried across the facade of new attached structures which occupy more than one house lot. Ways in which such articulation may be achieved easily on extended facades include rhythmical grouping of openings in clusters, inclusion of vertical delineations in the wall plane and architectural expression of structural bays.~~

~~[2] The facade of a structure erected on a single house lot should be proportioned so that the height equals at least 1 1/2 times the width.~~

~~(e) Architectural features. Rowhouse roofs generally should not be visible from the street front, except where a proposed design relates to an abutting historic structure or to a streetscape with several structures possessing roof surfaces visible from the street.~~

~~(f) Ornamentation. New infill structures may incorporate ornamental features common to the district; otherwise, decorative features should be both clearly modern and compatible with the district.~~

~~(g) Indication of floor levels by means of opening placement and use of belt courses should be related primarily to those levels generally indicated on the entire block and secondarily to those of the two abutting structures.~~

~~(h) Building height. Building height should relate primarily to the general height of the buildings on the same side of the block. Secondary consideration should be given to the following:~~

~~[1] The maximum height of a building should be not greater than the taller of the abutting structures on each side of the building site.~~

~~[2] The minimum height of a street facade should be not less than the lower of the abutting structures on each side of the building site.~~

~~(i) In districts characterized by contiguous rowhouse construction, the entire street frontage of a lot should be occupied by the building facade(s) which adheres to the height guidelines. In historic areas characterized by detached residential construction, the street front setback should be consistent with those structures on the block or street which contribute to the historic and aesthetic character of the streetscape.~~

~~(j) The following submissions shall be required, in addition to the documentation normally required as part of a building permit application, for all new construction in historic districts:~~

~~[1] Elevations (three copies).~~

~~[2] Vertical detail section from the base to the top of the primary facade(s), through the entry door (three copies).~~

~~[3] Elevation drawings of adjacent buildings.~~

~~[4] Details of ornamentation at one half inch or three fourths inch scale (three copies).~~

~~[5] Photos of existing building lot in context.~~

~~[6] Street view photo (both sides).~~

~~[7] Floor plans (two copies).~~

~~[8] Vicinity map showing the location of the site in relation to cross streets and adjacent buildings.~~

~~[9] Rendering of building in street photo context.~~

~~[10] Any additional documentation as may be required.~~

~~[11] Samples of materials and colors (two of each).~~

~~(4) New construction in or adjacent to the Downtown Albany Historic District. The area comprising the Downtown Albany Historic District has been the center of Albany's growth and development throughout the City's history. This characteristic has resulted in the district's potentially conflicting distinctions of being the location of many of the City's most architecturally and/or historically significant buildings and sites, while also being one of the most logical and desirable locations for new development. Due to the diversity of the existing components of the district, every proposed project involving new construction downtown will be evaluated for appropriateness to its site and for quality of design and materials. The following general guidelines apply to all new construction in or adjacent to the Downtown Albany Historic District:~~

~~(a) Street pattern. A feature of downtown with great historic significance is the street pattern that has surveyed largely intact from the 17th Century. New construction should respect this historic street pattern at ground level.~~

~~(b) Street facades. The street facade(s) of a new building should be located at the lot line, as has traditionally been the case in the district. In the design of corner buildings, particular attention should be given to the definition of the street corner(s) through the use of building mass.~~

~~(c) Overall design. If at all possible, the scale, materials and facade configuration of a new structure should relate to those of the adjacent structures and the overall streetscape. The goal of these guidelines is to secure compatible new design; the replication or imitation of existing structures is strongly discouraged. The appropriate use of contemporary styles and materials is encouraged, although such styles should fit into the general context of the immediate vicinity.~~

~~(5) Miscellaneous guidelines.~~

~~(a) Fences and accessory structures.~~

~~[1] When visible from a public right of way, proposed fences or other accessory structures, such as trellises or storage sheds, shall be reviewed by the City Planning Office staff and should be in general conformance with the review criteria in this section.~~

~~[2] Chain link fences located on street frontage will not be considered appropriate for many areas within historic districts.~~

~~[3] Wood fences generally should be painted or covered with a solid stain to avoid too rustic of an appearance.~~

~~[4] Fences and walls shall be required to screen parking areas. Particular design consideration should be given to the screening of parking lots. In most cases, parking lots should be screened by masonry walls or by more massive and permanent wood or metal fences. Whenever practicable, parking lot fences or walls should be in line with the front plane of the buildings on the street and should visually screen parked vehicles from the street.~~

~~(b) Sign design guidelines.~~

~~[1] In general, sign sizes should be minimal to avoid obscuring architectural details and to avoid visual clutter on the street.~~

~~[2] Signs for first floor commercial space in historic districts generally should be placed no higher than the bottom of the second story windows. Signage should be kept to the first story frieze or lintel area usually found on streetside 19th Century and early 20th Century Albany commercial storefronts.~~

~~[3] Backlit plastic signs or awnings are discouraged by the Commission as inappropriate to the 19th and early 20th Century character of the districts.~~

~~[4] Neon signs, appropriately designed and in character with the street and building, may be appropriate.~~

~~[5] Existing signs which are more than 30 years old also may contribute to the historic character of the district and the building, and their design will be considered carefully before replacement will be permitted.~~

#### ~~§ 42-92. Enforcement.~~

~~A. All work performed pursuant to a building permit issued under this article shall comply with the terms of the certificate of appropriateness and shall be carried out in strict conformity with such certificate.~~

~~B. It shall be the duty of the Commissioner of Buildings and Regulatory Compliance to inspect any such work during the course of construction to ensure compliance. In the event that any such inspection reveals that the work is not being carried out in compliance with the certificate of appropriateness, the Commissioner shall order the work to cease and may order corrections to be made. In addition, the Commissioner may revoke the building permit.~~

~~C. No certificate of occupancy shall be issued for any work for which a certificate of appropriateness was required unless the work has been carried out in compliance with the terms of such certificate.~~

#### ~~§ 42-92.1. Maintenance and repair of structures and improvements.~~

~~A. Every person in charge of a structure or improvement on a landmark site or in a historic district shall keep in good repair:~~

~~(1) All of the exterior portions of such structure or improvement; and~~

~~(2) All interior portions thereof which, if not so maintained, may cause or tend to cause the exterior portions of such structure or improvement to deteriorate, decay or become damaged or otherwise to fall into a state of disrepair.~~

~~B. Every person in charge of a structure or improvement containing an interior landmark shall keep in good repair:~~

~~(1) All portions of such interior landmark; and~~

~~(2) All other portions of the structure or improvement which, if not so maintained, may cause or tend to cause the interior landmark contained in such structure or improvement to deteriorate, decay or become damaged or otherwise fall into a state of disrepair.~~

~~C. The provisions of this section shall be in addition to all other provisions of law requiring any such structure or improvement to be kept in good repair.~~

#### ~~§ 42-93. Complaints of violations; penalties for offenses.~~

~~A. Complaints and determinations of violation. Any person alleging violation of this chapter may file a complaint in writing with the Commissioner, who shall investigate the same and prepare a report thereon. If reasonable evidence of a violation exists, the Commissioner may then revoke or suspend the permit or issue a notice of violation and an order to cease and desist.~~

~~B. Penalties. Any convictions of violating or assisting in the violation of this chapter or the terms and conditions of any certificate of appropriateness shall be punishable by a fine not to exceed \$1,000 or by imprisonment not to exceed 15 days, or both, for each offense. Each day that a violation is continued uncorrected or resumed, after the violator is notified, shall constitute a separate offense.~~

~~C. Violators may also be subject to the penalties prescribed in § 133A-3 of Chapter 133A of the City Code, if applicable.~~

#### ~~§ 42-94. Waivers or modifications; demolition requirements.~~

##### ~~A. Hardship.~~

~~(1) After receiving written notification from the Commission of the denial of a certificate of appropriateness, an applicant may request, in writing, a waiver or modification of any of the criteria or standards adopted pursuant to § 42-91. The Historic Resources Commission reserves the right to waive or otherwise modify such standards upon a finding that such action is necessary to eliminate practical difficulties or economic hardship associated with strict interpretation of these provisions and that the result will not violate the spirit and intent of these provisions. The applicant shall have the burden of proving any practical difficulty or economic hardship that is claimed. The Commission shall limit the waiver or modification of the criteria or standards to the minimum required to effect substantial justice and may prescribe conditions that it deems necessary or appropriate.~~

~~(2) The Planning Office staff may require additional information, to be appended to the application, which will verify the practical difficulties or economic hardship claimed by the applicant.~~

##### ~~B. Demolition requirements.~~

~~(1) When passing upon an application for demolition, the Commission shall require a showing by the applicant that preservation of the building constitutes a hardship, as listed below, or that the building is a noncontributing structure in the district. The Commission may require the applicant to provide an independent structural evaluation by a qualified structural engineer.~~

~~(2) Before the Commission takes final action on a request for demolition, the following items shall be considered:~~

~~(a) Whether the property is capable of earning a reasonable return, regardless of whether that return is the most profitable return possible;~~

~~(b) If the property can be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and~~

~~(c) Whether efforts to find a purchaser interested in acquiring the property and preserving it have failed.~~

~~(3) Demolition shall be permitted only after the developer of the site has submitted and obtained design approval of his/her plans for new development under the provisions of this article, including an acceptable timetable and guaranties, which may include performance bonds for demolition and completion of the project. In no case shall the time between demolition and commencement of new construction or lot improvement exceed six months.~~

~~§ 42-95. Reports and recommendations; referral of related information to Commission.~~

~~A. Any City agency having responsibility for the preparation of plans for the construction, reconstruction, alteration or demolition of any improvement or proposed improvement which is owned by the City or is to be constructed upon property owned by the City, and is located or is to be constructed on or adjacent to an historic site, in or adjacent to an historic district, or in or adjacent to an archaeologically sensitive area, shall refer such plans to the Commission for a recommendation prior to City action approving or otherwise authorizing the use of such plans with respect to securing the performance of such work. Such recommendation shall be submitted to the Mayor and to the agency having such responsibility within 45 days after the Commission receives the plans for review.~~

~~B. No officer or agency of the City whose approval is required by law for the construction or effectuation of a City owned or City sponsored project shall approve the plans or proposal for or the application for approval of such project, unless, prior to such approval, such officer or agency has received from the Commission a report on such plans, proposal or application for approval or a notification that the proposed action has been reviewed and approved as per these provisions.~~

~~C. Any City agency that conducts historic preservation planning surveys or applies for or receives notification of state or federal historic designation of any property within the City shall provide copies of materials relating to these matters to the Historic Resources Commission for central filing.~~

~~§ 42-96. (Reserved)~~

~~[1] Editor's Note: Former § 42-96, Limitation of powers, was repealed 12-2-2013 by L.L. No. 5-2013.~~

~~§ 42-97. Severability.~~

~~If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.~~

Part 13. Planning Board of City of Albany

Article XXIII. General Provisions

§ 42-177. Creation; membership.

A City Planning Board of five members is hereby created, the members to be appointed by the Mayor.

§ 42-178. Members; qualifications; terms of office; compensation; Mayor.

A. Of the members of the Board to be appointed, not more than two shall be officials of the City of Albany. The terms of the member or members of the Board who hold municipal office, if any, shall terminate with the term of the Mayor selecting such member or members. The successors to the nonmunicipal officeholders on the Board shall be appointed for the term of five years from and after the expiration of the term of their predecessors in office.

B. The Chairman shall be selected by the Mayor.



C. The members of the Board who hold municipal office shall serve without compensation.

D. The municipal official or officials on such Board shall not by reason of membership thereon forfeit their right to exercise, perform the duties or receive the compensation of the municipal office held by them during their membership.

E. The Mayor shall have authority to remove any member of the Board for cause after public hearing.

F. In the event of a vacancy on the Board by reason of the death, resignation or removal of any member, the Mayor shall have authority to fill such vacancy for the unexpired term of such member.

§ 42-179. Employment of experts; expenses; Board of Estimate and Apportionment.

The Planning Board shall have the power and authority to employ experts and a staff and to pay for their services and such other expenses as may be necessary and proper, not exceeding in all the appropriations that may be made for such Board, which services and expenses shall in the first instance be authorized and approved by the Board of Estimate and Apportionment.

§ 42-180. Preparation of Master Comprehensive Plan; holding of public hearing.

A. The Planning Board may prepare and change a Comprehensive ~~Master-Plan~~ for the development of the entire area of the City, which ~~Master-Plan~~ shall show existing and proposed streets, bridges and tunnels and the approaches thereto, viaducts, parks, public reservations, roadways in parks, sites for public buildings and structures, zoning districts, pierhead and bulkhead lines, waterways and routes of public utilities and such other features existing and proposed as will provide for the improvement of the City and its future growth, protection and development, and will afford adequate facilities for the public housing, transportation, distribution, comfort, convenience, public health, safety and general welfare of its population.

B. Such Planning Board may advertise and hold public hearings when it desires, notice of which hearings shall be advertised at least once in an official newspaper or in a newspaper of general circulation in said City at least five days before each such hearing.

C. The Master Plan and all modifications thereof shall be on file in the office of the ~~Planning Board~~ Department of Planning and Development, and the Planning Board shall file certified copies in the offices of the City Engineer and the City Clerk.

D. ~~The Planning Board shall continue to enjoy the power to approve, modify and approve, or disapprove plats showing lots, blocks or sites, with or without streets or highways for the purpose of providing for the future growth and development of the City and affording adequate facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of the citizens of Albany.~~

E. ~~In the exercise of its authority to approve, modify and approve, or disapprove plats, the Planning Board shall proceed in accordance with § 32 of the General City Law and, where applicable, § 239-n of the General Municipal Law.~~

F. ~~The City Engineer shall issue all certificates required by law to be issued in connection with the Planning Board's actions or failure to take action.~~

G. ~~The City Clerk shall file with the County Clerk of the County of Albany a certificate, accompanied by a copy of this article, showing that the Planning Board has been authorized to take action on plat plans and that the City Engineer has been authorized to issue all certificates of approval, modification and approval, disapproval or failure to take timely action.~~

H. The Planning Board may adopt rules and regulations governing its procedures.

§ 42-181. Common Council; jurisdiction.



A. A notice and agenda of every Planning Board meeting shall be provided to the Common Council at least one week prior to any meeting of the Planning Board.

B. The Common Council may by general or special rules provide for the reference of any matter or class of matters to the Planning Board before final action thereon by the public body or officer of said City having final authority thereon with or without the provision that final action thereon shall not be taken until said Planning Board has submitted its report thereon or has had a reasonable time to be fixed in said rule to submit the report.

§ 42-182. Planning Board; powers and authority.

The Planning Board shall have the following powers and duties: ~~full power and authority to make such investigations, maps and reports and recommendations in connection therewith relating to the planning and development of the City as to it seems desirable, provided that the total expenditures of said Board shall not exceed the appropriation for its expenses.~~

A. Approve, approve with conditions or deny Major Development Plans and District Plans

B. Approve, approve with conditions or deny Conditional Use Permits.

C. Approve, approve with conditions or deny the demolition of buildings or structures where so directed by Chapter 375.

D. Review and decide upon applications pertaining to the design of buildings or structures where so directed by Chapter 375.

E. Review and make recommendations to the Common Council on applications for Amendments to the Comprehensive Plan, Zoning Map and Unified Sustainable Development Ordinance.

F. The Planning Board shall continue to enjoy the power to approve, modify and approve, or disapprove plats showing lots, blocks or sites, with or without streets or highways for the purpose of providing for the future growth and development of the City and affording adequate facilities for the housing, transportation, distribution, comfort, convenience, safety, health and welfare of the citizens of Albany.

G. To make such investigations, maps and reports and recommendations in connection therewith relating to the planning and development of the City as to it seems desirable, provided that the total expenditures of said Board shall not exceed the appropriation for its expenses.

Part 15. ~~Department of Urban Redevelopment~~ Department of Buildings & Regulatory Compliance

Article XXV. General Provisions

§ 42-186. ~~Creation.~~ Creation of Department of Buildings and Regulatory Compliance.

There shall be in the City of Albany a department known as the "Department of Urban Redevelopment." There is hereby created and established a Department of Buildings and Regulatory Compliance.

§ 42-187. ~~Director; appointed; Mayor.~~ Commissioner; qualifications; Deputy and Assistant Commissioners.

There shall be appointed by the Mayor a Director who shall be the head of the Department of Urban Redevelopment. There shall be appointed by the Mayor a Commissioner of Buildings and Regulatory Compliance, who shall be the head of the Department of Buildings and Regulatory Compliance and carry out the functions and duties thereof and shall meet the qualifications as provided in the New York State Uniform Fire Prevention and Building Code. The Commissioner shall appoint Deputy or Assistant Commissioners, who shall serve at the Commissioner's pleasure and serve in the Commissioner's absence. The Commissioner, Deputy and Assistant

Commissioners are vested with the authority, direction and control over the Department, including the authority to appoint and remove employees of said Department.

[§ 42-188. ~~Director; term of office. Commissioner; duties.~~](#)

~~The Director shall hold office during the pleasure of the Mayor. In addition to the duties found in Chapter 133 of this Code, the Commissioner shall faithfully execute all laws and ordinances relative to the erection, construction, alteration or removal of buildings or other structures and see that the same are obeyed. He shall have power to make, adopt and enforce such reasonable rules and regulations, not inconsistent with law or the ordinances of the Common Council, as may be reasonably necessary to effect a prompt and efficient exercise of all the powers conferred and the performance of all duties imposed by law or ordinance upon him or the Department under his jurisdiction. He shall have power to establish and enforce such reasonable rules and regulations as may be necessary for the government of his Department and shall have general supervision over the records of the Department and its officers and employees. Said Commissioner shall have the power to enter into and examine buildings and structures, lots and enclosures of every description to see that all laws of the state and ordinances of the City and rules and regulations of his Department are fully enforced. He shall have full power and authority to pass upon and determine all questions arising under the provisions of law or ordinances relative to the plans, manner or method of construction or materials to be used in erecting, altering, repairing, equipping, furnishing or improving any building or structure or concerning the observance and maintenance of all proper and legal precautions against fire and for public safety in said City. He shall have full power and authority to order and compel the suspension of any work and prohibit the use of any material, machinery or equipment in violation of the provisions of law or the ordinances of said City and may make such tests as he may deem necessary to determine the safety of any building, structure, material, machinery or equipment which it becomes his duty to inspect. He shall have full power and authority to supervise and inspect such erection, construction or alteration and to require that such erection, construction or alteration and the manner and mode thereof and the materials used thereon shall conform to the several provisions of the laws, ordinances and rules and regulations relative thereto.~~

[§ 42-189. ~~Director; appointment; evidence of. Plans and specifications.~~](#)

~~The appointment of the Director of Urban Redevelopment shall be evidenced by a certificate, in writing, signed by the Mayor and filed forthwith in the office of the City Clerk. All plans and specifications for the erection, construction or alteration of buildings or other structures shall be submitted to the Commissioner for his approval, and no building or other structure shall be erected, constructed or altered until the plans and specifications therefor shall have been approved and a permit issued for such erection, construction or alteration. No permit shall be required for the making of ordinary repairs of buildings or structures or of the plumbing, drainage, electrical wiring or gas piping thereof, but such repairs shall not be construed to include the cutting away of any stone or brick wall or any portion thereof, the removal or cutting of any beams or supports or the removal or closing of any staircase or the alteration of any house sewer or private sewer or drainage system. No change shall be made in the use or occupation of any existing building which will materially alter its character without the permission of the Commissioner and until said building has been reconstructed and modified to conform to the provisions of this chapter and the Building Code.~~

[§ 42-190. ~~Director; deputy and subordinates; Board of Estimate and Apportionment; disability. Application to vary or modify rules.~~](#)

~~The Director shall appoint to hold office during his pleasure a deputy and such other subordinates as may be prescribed by the Board of Estimate and Apportionment. In case of the inability of the Director or of a vacancy in the office, the Deputy Director shall discharge the duties of the office until the Director returns, his disability ceases or the vacancy is filled. When the owner or lessee of any building or structure about to be erected, constructed or altered files with the Commissioner an application for the variation or modification of any rule or regulation or of any provision of law or ordinance relating to the erection, construction or alteration of buildings or other structures, he shall in such application fully set forth the grounds for the desired variation or modification. The plans and specifications for the proposed erection, construction or alteration shall accompany such application. The Commissioner shall fix a date within a reasonable time for hearing such application and as soon as practicable thereafter render a warrant decision thereon. Upon the hearing, the applicant may appear and be heard. The particulars of each such application and the decision thereon shall be entered in the records of the Department of Buildings and Regulatory Compliance, and in case the application is granted, a permit therefor shall be issued.~~

#### ~~§ 42-191. Undertaking. Records.~~

~~The Director, the Deputy Director and such other persons as the Director shall designate, before entering upon the discharge of the duties of their respective office, shall each execute and file with the City Clerk an official undertaking in the penal sum of \$5,000. The Commissioner shall preserve a record of all plans and specifications and of all applications for his approval thereof concerning, affecting or relating to the erection, construction or alteration of buildings or other structures. Such record shall include the date of the filing of each such application; the name and address of the owner of the land on which the building or structure mentioned in such application is situated; the names and addresses of the architect and builder employed thereon; a designation of the premises sufficient to identify the same; and a statement of the nature and proposed use of such building or structure and a brief statement of the decision of the Commissioner upon such application and the date thereof. Such records shall be public records and shall be open to the inspection of the public.~~

#### ~~§ 42-192. Powers and duties of Director. Right of appeal.~~

~~The Director of the Department of Urban Redevelopment shall be charged with the following duties and powers:~~

~~A. To make surveys and plans for and estimates of the cost of redevelopment of substandard and unsanitary areas in the City and recommending to the Council specific methods for the elimination of such conditions by clearance, replanning or rehabilitation of the same and for providing adequate recreational and other facilities in such areas.~~

~~B. To prepare and submit at the direction of the Council applications for approval of projects pursuant to any federal or state law under which grants may be made to said City to accomplish such work.~~

~~C. To make and report to the Council plans and estimate costs for the conservation of residential areas by the removal of nonconforming uses and for the rehabilitation of structures in such area.~~

~~D. To represent the City in submitting applications for federal or state funds for the conservation or redevelopment of any areas as may be authorized by resolution of the Council.~~

~~E. To make from time to time, rules and regulations, not inconsistent with the general law or any local law or ordinance, for the regulation of its activities and the management and discipline of its officers and employees.~~

Whenever the Commissioner shall reject or refuse to approve any plan or specification for or the mode or manner of construction proposed to be used in the erection, construction or alteration of any building or structure, or when it is claimed that the provisions of the Building Code or the provisions of any law or ordinance relative to the erection, construction or alteration of buildings or other structures do not apply, or when it is claimed that the true intent and meaning of said code, laws or ordinances have been misconstrued or improperly interpreted, the owner, or any person aggrieved, or any offices, Department, board or bureau of the City may appeal as hereinafter provided.

§ 42-192.1. Powers and duties of Director. [Proceeding to enforce law.](#)

The Commissioner is authorized, by and with the advice and consent of the Corporation Counsel, in the name of the City, to maintain actions to restrain the performance of any act contrary to, or in violation of, the rules and regulations of his bureau, laws and ordinances and to prohibit the use or occupation of any building or structure which has been or is being erected, constructed or altered in violation of the provisions of any law, ordinance or rule or regulation relative to the erection, construction or alteration of buildings or structures. In any such action, no undertaking shall be required. He may in like manner maintain actions for the recovery of penalties established by law or ordinance.

§ 42-192.2. Powers and duties of Director. [Removal of buildings deemed to be nuisances.](#)

Every structure or part thereof erected or placed or permitted to continue contrary to the provisions of this chapter or the Building Code or Sanitary Code shall be deemed to be a common nuisance, and the Commissioner may order the same removed, and in case the owner thereof shall neglect or refuse to remove such structure or part thereof, within five days after notice so to do, the Commissioner may remove such structure or part thereof at the expense of the owner or may cause the same to be abated in the same manner as other nuisances.

## [Part 24. Department of Development and Planning and Development](#)

### [Article XXXV. General Provisions](#)

#### [§ 42-283. Establishment.](#)

There is hereby established a department known as the "Department of ~~Development and Planning and Development~~."

#### [§ 42-284. Commissioner.](#)

There shall be appointed by the Mayor a Commissioner of ~~Development and Planning and Development~~ who shall head the Department of ~~Development and Planning~~ and who shall serve and hold such office at the pleasure of the Mayor.

#### [§ 42-285. Qualifications and compensation of Commissioner; Acting Commissioner; subordinates.](#)

A. The qualifications for eligibility to hold the office of the Commissioner and the compensation of the Commissioner shall be established by the Board of Estimate and Apportionment.

B. Pending appointment of a qualified Commissioner, the position of Acting Commissioner may be established to serve temporarily; such temporary appointment shall be made by the Mayor.

C. The Commissioner shall appoint such deputies, directors and other subordinates as shall be authorized by the Board of Estimate and Apportionment and who shall serve at the Commissioner's pleasure.

#### [§ 42-286. Departmental scope, powers and duties.](#)

The Department of ~~Development and Planning and Development~~ shall have the following functions:

A. Economic Development: to undertake, direct, supervise and coordinate the City's participation in activities, programs and ventures intended or designed to advance the economic climate in the City of Albany through marketing, real estate, planning and financial strategies and techniques.

B. Planning: to review all applications and plans for ~~signs, variances, special-use permits, zoning changes~~ all permits, approvals and other aspects involving the City's ~~Zoning Ordinance, Sign Ordinance~~ Unified Sustainable Development Ordinance and other federal, state and local laws and regulations related thereto, together with the coordination of and technical support required in the administrative and/or legislative review and consideration involving the City Planning Board, Zoning Board of Appeals, Common Council and Historic Resources Commission.

C. Housing and community development: to plan, undertake and direct the City's efforts in providing affordable rental accommodations and home ownership opportunities for its residents by encouraging the growth and revitalization of the City's housing stock; to supervise and/or coordinate the City's participation in programs, activities and ventures designed to construct new housing accommodations, rehabilitate existing residential structures or convert other structures to residential use to better meet the need for affordable housing; to plan and undertake other activities designed to contribute to an enhanced quality of life and long-term stability for the City's neighborhoods, including activities which provide additional opportunities for employment and business development to the residents of those neighborhoods; and to coordinate the other City agencies as such actions relate to the provision of housing in and development of the City's neighborhoods.

D. Annual program evaluations and audit reports.

(1) It is hereby ordered that the Department of ~~Development and Planning and Development~~ submit to the Common Council annual program evaluation and audit reports on agencies and organizations funded with state and federal moneys.

(2) The program evaluations and audit reports shall be submitted in January of each year. Such evaluations and reports must be in full accordance with all applicable regulations.

(3) The information to be contained in the annual reports will include but not be limited to the following:

(a) Service indicators: documentation indicating that program requirements were met, including goals, performance standards and objectives and the methodology used for measuring performance.

(b) Processing and servicing loans: documentation indicating the loan amount, and the funds used, the amount collected on repayment and the payment history.

(c) Documentation on how the grantees met the national objective.

(d) Contractor evaluations: documentation evaluating contractor's qualifications, performance history and compliance with federal, state and City guidelines regarding equal opportunity ownership, participation and employment.

~~§ 42-287. Repealer; transferal of functions, personnel and property.~~

~~Part 12 (Office of Planning and Neighborhood Development), Part 25 (Department of Economic Development) and Part 16 (Department of Housing and Community Development) of Chapter 42 of the code of the City of Albany are hereby repealed; those departments abolished and the functions, personnel, and property thereof are transferred to the Department of Development and Planning, as created by this article. Whenever in any local law, ordinance, Charter provision or other applicable statute, rule or regulation reference is made to the "Office of Planning and Neighborhood Development," "Department of Economic Development" or the "Department of Housing and Community Development," reference shall be deemed to have been~~

~~made to the "Department of Development and Planning." Additionally, personnel of the Community Development Agency are similarly hereby transferred to the Department of Development and Planning.~~

## Part 27. Commission on the Arts

### Article XXXVIII. General Provisions

#### § 42-302. Creation; purpose; function.

There is hereby established and created a commission of City government to be known as the "Commission on the Arts." The purpose of said Commission shall be to enhance the programming, administrative, fundraising and governance capacities of arts organizations throughout the City.

#### § 42-303. Membership; organization; vacancies.

A. The Commission shall consist of no fewer than 12 nor more than 15 members, who shall be appointed by the Mayor and serve at ~~his~~ the Mayor's pleasure. All Commission members shall have a demonstrated interest or knowledge in graphic arts, fine arts or the performing arts and shall include representatives of local government, business, education, the arts and the community.

B. All members shall be appointed for three-year terms but shall continue to serve beyond such term until a successor is appointed. Members may be reappointed for succeeding terms.

C. The Mayor shall designate one member of the Commission as its Chair and one member as its Vice Chair. The Vice Chairman shall act in the absence of the Chair.

D. The presence of a majority of the members shall constitute a quorum, and the concurring votes of a majority of those members voting on a particular matter shall be required to carry out actions of the Commission.

E. A vacancy in the membership of the Commission for any cause shall be filled by Mayoral appointment for the balance of the unexpired term.

F. The Commission shall meet as often as is necessary to discharge its business in a timely fashion and/or at the call of the Chairman.

#### § 42-304. Powers and duties.

The Commission shall have the following powers, duties and functions:

A. To provide cooperative administrative arrangements for arts organizations.

B. To assist in providing funds as needed for arts entertainment and culture organizations.

C. To receive and disburse dedicated revenues for shared administrative, marketing and public information services.

D. To coordinate the continuing development of the City Arts District.

E. To encourage broad participation from the public and private sectors, the professions, educational institutions and community leaders.

F. To help to plan, develop and oversee management of a multiuse performing arts facility.

G. To develop, maintain and operate arts and supporting facilities under ownership or through lease, as appropriate.

H. To help arts groups encourage all levels of government to maintain and increase their commitment to the arts.

I. To provide suggestions on areas of need for governmental support.

J. To assist in the implementation of a public art program.

K. To expand volunteer involvement.

L. To support the planning and completion of arts and cultural memorials.



M. To promote Albany's leadership role as the hub of Capital Region arts activity.

N. To advise the City on the appropriateness of the proposed location of any proposed donations of physical art to the City, in a manner consistent with federal and state constitutional protections of free speech and expression.

O. To advise the Department of Planning and Development on the time, place, and manner of any proposed long-term or temporary mural or building or wall graphic that exceeds the size, height, shape, or format of a sign, in a manner consistent with federal and state constitutional protections of free speech and expression.

§ 42-305. When effective.

This article shall take effect immediately upon final passage and signature into law.

## Part 35. Office of the City Archaeologist Board of Zoning Appeals

### Article XLVI. General Provisions

§ 42-359. ~~Legislative finding and purpose; creation of office and position of City Archaeologist.~~ Creation.

A. ~~The City of Albany is one of the last places in the United States that still has significant Dutch Colonial period artifacts located within its boundaries as evidenced by the uncovering of several articles of archaeological significance during construction projects in this City. The City also has a strong history involving the Revolutionary War, the Civil War, and the Underground Railroad. The Common Council finds that the City must have the tools necessary to better analyze and preserve archaeological discoveries for future generations. The Common Council further finds that it is in the public interest to establish goals and priorities to promote archaeological programs, and to preserve, promote, and display the extraordinary artifacts which have been and will be recovered in the future.~~ Pursuant to § 81 of the General City Law of the State of New York, there is hereby established a Board of Zoning Appeals (BZA) consisting of seven members appointed by the Mayor.

B. ~~Accordingly, there is hereby created the Office of the City Archaeologist and the position of City Archaeologist, who shall be appointed by the Mayor and serve at his pleasure.~~

C. ~~In case of absence or other disability of the City Archaeologist reasonably expected to exceed 30 days, the Mayor may appoint an acting City Archaeologist to serve in the place and stead of the City Archaeologist during such absence or disability.~~

§ 42-360. ~~Scope, qualifications, powers and duties of City Archaeologist.~~ Powers and Duties

A. ~~The City Archaeologist shall be a professional archaeologist who meets the professional qualification standards set forth in the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation. The City Archaeologist shall advise the Mayor, the Common Council, the Historic Resources Commission, the Planning Board, the Board of Zoning Appeals, the Department of Buildings and Regulatory Compliance, the Engineering Department, and the Planning Department on archaeological matters in the City of Albany. The Board of Zoning Appeals shall have the power and duty to hear and decide appeals from any orders, requirements, decisions or determinations made by a City administrative official interpreting or implementing the provisions of Chapter 375, or as otherwise provided by law.~~

B. ~~The City Archaeologist shall have the following duties: The Board may interpret the provisions of this USDO, grant or deny variances, as herein provided.~~

(1) ~~To assist the Historic Resources Commission in safeguarding and preserving the archaeological heritage of the City of Albany;~~

(2) ~~To advise and make recommendations to the City as to the site plan review process;~~



- ~~(3) To advise and make recommendations to the City as to the issuance, suspension, or revocation of permits and certificates of appropriateness for the excavation, survey, or other disturbance of archaeological sites located on public or private land, and make initial archaeological review and sensitivity assessment of potential archaeological resources for proposed development projects in the City of Albany;~~
- ~~(4) To render advisory opinions to the Mayor, the Common Council, the Historic Resources Commission, the Planning Board, the Board of Zoning Appeals, the Department of Buildings and Regulatory Compliance, the Engineering Department, and the Planning Department with regard to archaeological resources;~~
- ~~(5) To develop and promulgate policies to be followed with regard to archaeological resources;~~
- ~~(6) To extend aid and assistance to other agencies, governmental entities, organizations, and individuals in the interest of archaeological preservation and resource management;~~
- ~~(7) To advise the Mayor and the Historic Resources Commission on the scholarly editing, writing, and publication of archaeological information to be issued under the name of the City of Albany and the Office of the City Archaeologist;~~
- ~~(8) To evaluate and give recommendations as to nominations of archaeological properties proposed to be acquired and administered by the City;~~
- ~~(9) To conduct administrative inspections of archaeological excavations permitted by the City;~~
- ~~(10) To review all development plans which involve potential archaeological sites, conduct preliminary assessments of the potential archaeological significance of any site plan area and of the impact of any proposed ground-disturbing activities on such area, and make recommendations as to the necessity of cultural resource investigations;~~
- ~~(11) To submit an annual report to the Mayor, the Common Council, and the Historic Resources Commission concerning archaeology in the City of Albany; and~~
- ~~(12) To carry out any other related functions delineated in the Code and to recommend rules and regulations necessary to the effectuation of this article's purposes.~~

C. The Board shall hear and decide appeals from the decision or determination of the City Clerk relative to the issuance of a cabaret license pursuant to Part 3 of Chapter 111 of the Code of the City of Albany, and as called upon by any other Chapters in the Albany City Code.

§ 42-360.1. Membership, appointment and terms of office.

A. The members of the Board serving during the effective date of Chapter 375 shall continue in office as members of the BZA.

B. The Mayor shall appoint subsequent Board members to three-year terms. Terms shall begin January 1 and expire at 12:00 midnight on December 31. A member shall continue to serve until a successor is appointed.

C. An appointment to fill a vacancy occurring prior to the expiration of a term shall be for the remainder of the unexpired term. Board members may be compensated at a rate determined by the Board of Equalization and Assessment.

§ 42-360.2. Officers.

The Mayor shall appoint a Board Chair, and the Board shall elect a Vice-Chair from among its members. The Chair shall preside over all Board meetings. The Vice-Chair shall preside over Board meetings in the absence of the Chair. If both the Chair and the Vice-Chair are absent, the Board shall vote to determine who shall serve as acting Chair for the meeting.

§ 42-360.3. Meetings.

A. Meetings of the Board shall be held at least once a month on a regular schedule established by the Board members, with additional meetings to be held at the call of the Chair if determined to be necessary.

B. All Board meetings shall be open to the public and held in strict compliance with Article 7 of the New York State Public Officers Law. All proceedings, including all deliberations of the Board, shall be open to the public.

C. The presence of four members shall constitute a quorum of the Board. The concurring vote of four members shall be required to carry out any action of the Board, except as may be statutorily required.

D. The Board shall keep minutes of its proceedings and shall keep records of all votes taken and all official actions. All Board records shall be part of the public record and shall be kept on file in the office of the Chief Planning Official and that of the City Clerk.

E. All meetings shall comply with Chapter 34 (Meetings) of the Albany Code.

**Section 3. Chapter 111 of the Code of the City of Albany (Amusements) is amended as follows:**

Chapter 111. Amusements

Part 1. Licenses for Places of Amusements

Article III. Billiard and Pool Rooms

~~§ 111-20. License required; exceptions.~~

~~A. No person, persons, partnership, firm, association or corporation shall, within the limits of the City of Albany, establish, keep, maintain or conduct, as principal, agent or employee, any public billiard room, poolroom or other public place of any description in which the games of billiards or pool are carried on, or which includes any apparatus or paraphernalia for the playing of billiards or pool, and which is conducted as a public place of business for profits, without first having obtained and paid for a license as hereinafter provided.~~

~~B. The provisions of this section shall not apply to any club or organization formed in good faith, the privileges of which shall be enjoyed only by the members thereof who pay for such privilege a stated sum as a membership fee, except that such club or organization shall obtain from the City Clerk a permit before it may obtain a room or rooms in which pool or billiards are played. Such permit may be refused or at any time revoked by the City Clerk for such cause as he, upon investigation, deems sufficient.~~

~~§ 111-21. Application for license; bond.~~

~~A. Any person, persons, association, partnership, firm or corporation desiring to procure a license as herein provided shall file with the City Clerk a written application upon a blank form furnished by the City. Such application shall contain the names, residences and ages of the applicants, if an individual, firm or partnership, or the names of the principal officers, their residences and ages, if the applicant is an association or corporation. It shall also give the name or names of one or more persons whom such firm, partnership, corporation or association shall designate as manager or person in charge, with the address or addresses of the same. Such application shall further state the following:~~

~~(1) The length of time such applicant, or applicants, if an individual, firm or partnership, or the manager or person in charge, if the applicant is a firm, partnership, corporation or association, has or have resided in the City of Albany, his or their places of previous employment, whether~~

married or single, whether he or they or any of them have been convicted of a felony or misdemeanor and, if so, what offense, when and in what court.

~~(2) The premises where such poolroom or billiard room is to be located or conducted, giving street and number.~~

~~(3) Whether such poolroom or billiard room is to be conducted in connection with some other kind of business.~~

~~(4) Whether the applicant or applicants or manager had, either alone or with someone else, previously engaged as owner or employees in conducting a poolroom or billiard room, when and where and for how long.~~

~~(5) The floor on which such poolroom or billiard room is to be located, and whether any partitions or obstructions separate or divide the rooms therein or in any way prevent a clear view thereof from the street, if on the ground floor, or from the entrance, if on any floor other than the ground floor.~~

~~(6) The number of pool tables, billiard tables and combination pool and billiard tables in such room or place.~~

~~(7) Such other information as the City Clerk may from time to time require.~~

~~(8) Such application shall be signed and acknowledged before a notary public or other officer authorized to administer oaths in the City of Albany.~~

~~B. Such application shall be accompanied by a bond to the City of Albany approved as to form by the Corporation Counsel, in the penal sum of \$625, with a sufficient surety or sureties or sufficient collateral security, conditioned for the due observance during the time of the license of the Penal Law and the Code of Criminal Procedure of the State of New York, and of any and all ordinances of the City of Albany which are now in force or may hereafter be adopted by the Common Council respecting the maintenance and operation of billiard rooms or poolrooms.~~

#### ~~§ 111-22. Issuance or refusal to issue licenses or permits.~~

~~Upon the filing of the application and bond, as provided in the previous section, the City Clerk may, upon his approval of such application after investigation and such bond as to sufficiency of surety or sureties or collateral securities, and the payment to the City of the license fee hereinafter provided, issue to the applicant a license to establish, conduct and maintain a billiard room or poolroom or place as provided in § 111-20. No license or permit shall be refused except for a specific reason and for the protection of the public safety, good order or morals. All licenses shall be numbered in the order in which they are issued and shall state clearly the location of the poolroom or billiard room or place, the number of tables, the dates of issuance and expiration of the license and the name of the licensee. No applicant to whom a license has been refused shall make further application until a period of at least six months shall have elapsed since the last previous rejection unless he can show that the reason for such rejection no longer exists.~~

#### ~~§ 111-23. License fees; expiration.~~

~~Licenses shall expire on the first day of April succeeding the issuing thereof, and the license fee therefor shall be \$15 for each billiard table, pool table or combination pool and billiard table, for the license period of one year or fraction thereof. No license fee shall be prorated for a period of less than six months.~~

#### ~~§ 111-24. Licenses; penalties for offenses.~~

~~No person, firm or corporation shall permit any room or building, owned or controlled by him or it, to be used for the purpose of a public billiard room or poolroom unless the same shall be licensed as herein provided. Any person, firm or corporation violating the provisions of this~~

section shall be subject to a penalty of \$35 per day for each day such room or building shall be so occupied or used without a license.

[§ 111-25. Criteria for license refusal.](#)

A license shall be refused by the City Clerk to any applicant or applicants who or which shall have been convicted within three years of the date of application of an offense against any of the provisions of this article, or to any association or corporation of which a member or members shall have been so convicted, also to any person who has within five years of the date of application been convicted of a felony and to any association or copartnership of which any member has been so convicted of a felony, and if the poolroom, billiard room or the place in which a pool or billiard table is to be located and sought to be licensed does not comply in any way with the regulations, ordinances and laws applicable thereto.

[§ 111-26. Transfer of license.](#)

No transfer of license as to location or ownership shall be granted except after application therefor upon forms provided by the City Clerk, who may grant or reject such application after investigation. If the application for transfer is approved, this action shall be endorsed upon the license by the City Clerk.

[§ 111-27. Posting of license and ordinance.](#)

Every person, firm, partnership, association or corporation licensed in accordance with the provisions of this article shall immediately post such license and a copy of this article furnished by the City Clerk and keep the same posted while in force in a conspicuous place in the premises where pool or billiard playing is authorized to be carried on. The license shall be enclosed in a suitable wood and metal frame, having a clear glass front and a suitable wood or metal back, so that the whole of such license may be seen therein. It shall be unlawful for any person to post such license or to be permitted to post it upon premises other than those named in the application for such license, or knowingly to deface or destroy any such license. Whenever a license shall be lost or destroyed without fault on the part of the holder or his agents or employees, a duplicate license in lieu thereof under the original application and bond may be issued by the City Clerk in his discretion.

[§ 111-28. Use by minors.](#)

No licensee, or his or its agents or employees, shall permit or allow any minor actually or apparently under the age of 18 years to play thereon or to use any pool table or billiard table or to be or remain in, except on business, or to frequent any room where the game of pool or billiards is played as defined in § [111-20](#) unless accompanied by the parent or legally appointed guardian of such minor, or unless employed therein with the consent of the parent or guardian of such minor. It shall be deemed a violation of this article for any such minor to play upon or use any pool or billiard table as defined in § [111-20](#) or to be, or remain in, except on business, or to frequent any room or place where pool or billiards is played as provided in § [111-20](#), unless accompanied by, or employed therein with the consent of, the parent or guardian of such minor. It shall also be deemed a violation of this article for any person to play in a game of billiards or pool with such a minor with knowledge of such minority, or to entice such a minor to engage in a game for money or other valuable thing or make a wager with a minor upon the result of a game or games.

[§ 111-29. Gambling and disorderliness.](#)

It shall be unlawful for any licensee or his, their or its agents, servants or employees to:

A. Suffer or permit any dice to be thrown for money or other thing of value or to suffer or permit any cards, raffles or other games of chance or any form of gambling in the place where pool or

billiards is licensed to be played, or in any yard, booth, garden or other place appertaining thereto or connected therewith;

B. Suffer or permit such premises to become disorderly;

C. Sell, barter, furnish or possess or permit in such room or place any liquors or beverages which contain any alcohol in excess of the amount permitted by law, or any cocaine, morphine, heroin or opium, or any of their alkaloids, salts, derivatives or compounds, or any synthetic equivalent thereof either as to physical property or physiological action; or

D. Harbor intoxicated persons on the premises or allow intoxicated or partially intoxicated persons to resort thereto.

#### § 111-30. Revocation of license.

The City Clerk may, at any time, for such cause as he, upon investigation, deems sufficient, revoke any license granted under the provisions of this article. Whenever any license shall be so revoked, no refund of any unearned portion thereof shall be made, and no license shall be granted to conduct a poolroom or billiard room to any person, firm, partnership, association or corporation whose license has been revoked within a period of three years from the date of such revocation. Notice of such revocation and the reason therefor in writing shall be served by the City Clerk upon the person, firm, partnership, association or corporation named in the application by mailing the same to the address given in the application, and upon filing a copy of such with the City Clerk's office.

#### § 111-31. Penalties for offenses; cancellation of license and forfeiture of bond.

A. Any person, firm, partnership, association or corporation who himself or itself or by his or its clerk, agent or employee shall establish, keep, maintain or operate any public billiard room or pool room as defined in § 111-20, without the license or permit required by this article, or who shall violate any of the provisions of this article, or who, having had his or its license or permit revoked, shall continue to operate such billiard room or poolroom, shall, upon conviction thereof, be subject to a fine or penalty of not less than \$35 nor more than \$315, and each day on which such violation continues shall constitute a separate offense.

B. In addition to the penalty imposed, the license of the person, firm, association, partnership or corporation so convicted may be canceled and revoked, and the bond upon such license may be forfeited. Upon such forfeiture, the amount of the bond shall thereupon become due and payable to the City of Albany, and the amount thereof may be recovered in a civil action based upon such forfeiture.

C. It shall not be a defense to a prosecution for a violation of any of the provisions of this article that the premises where the violation is alleged to have occurred were conducted during prohibited hours as a private club if at the other times such premises were conducted as a public place of business for profit.

### Part 2. Amusement Devices and Game Rooms

#### Article V. General Provisions

#### § 111-44. Legislative intent.

The purpose of this Part 2 is to license amusement devices and to regulate the establishment of game rooms. Game rooms are regulated in order to ensure that the premises containing the game rooms comply with all fire, health, sanitary and building codes and laws and other applicable state and local laws, ordinances and regulations and to adopt rules and regulations governing the occupancy and use of such game rooms.

#### § 111-45. Title.

This Part 2 shall be known as the "Amusement Device and Game Room Control Ordinance of the City of Albany, New York."

~~§ 111-46. Definitions.~~

As used in this Part 2, the following terms shall have the meanings indicated:

~~AMUSEMENT DEVICE~~

Any mechanical, electric or electronic device used or designed to be operated for entertainment or as a game of skill by the insertion of a piece of money, coin, token or other article or by paying money to have it activated. This definition does not include:

~~A.~~ A jukebox.

~~B.~~ Amusement rides.

~~C.~~ Pool tables.

~~D.~~ Any device maintained within a private residence for the use of the occupants thereof and their guests.

~~E.~~ Any device, the possession or use of which is prohibited by law.

~~AMUSEMENT DEVICE LICENSE~~

A license issued pursuant to this Part 2 for an amusement device.

~~BOARD~~

The Board of Zoning Appeals of the City of Albany.

~~CITY~~

The City of Albany, New York.

~~CITY CLERK~~

The City Clerk of the City of Albany, New York.

~~GAME ROOM~~

A room or place used principally for and containing more than three amusement devices.

~~PERSON~~

One or more individuals, a corporation, partnership, association, trust, firm, trustee, receiver or assignee or any other legal entity.

~~PLANNING DEPARTMENT~~

The Planning Department of the City of Albany, New York.

~~PREMISES~~

Any room, building or place to which the general public has access or to which individuals have access with the permission of the person in control thereof.

~~RATING~~

An electronic video game voluntary rating by the Recreational Software Advisory Council, the Entertainment Software Rating Board or a comparable video game rating organization.

[Added 6-2-1997 by Ord. No. 39.122.96]

~~SPECIAL USE PERMIT~~

A permit obtained in accordance with Chapter 375, Zoning, of the Code of the City of Albany for the establishment of a game room.

~~Article VI. Amusement Devices~~

~~§ 111-47. License required.~~

Either the owner, distributor or person leasing an amusement device must obtain an amusement device license and pay the license fee and privilege tax as prescribed by this Part 2 prior to its being activated at any premises.

~~§ 111-48. License application.~~



A. An application for an amusement device license shall be filed with the City Clerk and shall specify the following:

- (1) The name, address and telephone number of the applicant and, if a firm, corporation, partnership or association, the principal officers and their addresses and telephone numbers.
- (2) The address of the premises where the amusement device(s) is to be located, together with the character of any other business carried on at the premises.
- (3) The name, address and telephone number of a manager, if any, who shall be in charge of the amusement devices.
- (4) The name, address and telephone number of the distributor, if any, where the amusement devices were obtained.
- (5) The name and address of the registered agent, if any, of the applicant upon whom service of process is authorized to be made.
- (6) The maximum number of amusement devices which the applicant proposes to place on the premises.
- (7) For any amusement device manufactured or otherwise produced on or after July 1, 1994, documentation of the video rating, if any, of each and every such device to be placed on the premises.
- (1) *Editor's Note: This ordinance also provided for the renumbering of former Subsection A(7) and (8) respectively as Subsection A(8) and (9).*
- (8) If the applicant is a not for profit corporation, the applicant's verification of this status must be submitted with the application.
- (9) If the applicant maintains premises holding a New York State liquor license, verification of a valid license must be submitted with the application.

B. The application shall contain a certification, under oath, made by the applicant, or principal officer if the applicant is other than a natural person, that the information contained in the application is complete and accurate.

§ 111-49. License fee and privilege tax; renewal.

A. There is hereby imposed, pursuant to the provisions of §§ 1201 and 1203 of the Tax Law of the State of New York, a privilege tax in the amount of \$35 per amusement device per year.

B. In addition to the privilege tax imposed in Subsection A above, the annual amusement device license fee shall be \$35 per amusement device, the payment of which shall be the responsibility of either the owner, distributor or lessee of the amusement device.

C. The tax/license year shall be from January 1 to December 31 of each year, and all licenses shall expire on the 31st day of December of each year.

D. The privilege tax and amusement device license fee shall be payable annually and shall accompany the application for an amusement device license. The applicant shall pay as follows:

- (1) For an application submitted on or after April 1, the applicant shall pay a privilege tax of \$25 per amusement device and a license fee of \$30 per amusement device.
- (2) For an application submitted on or after July 1, the applicant shall pay a privilege tax of \$20 per amusement device and a license fee of \$20 per amusement device.
- (3) For an application submitted on or after October 1, the applicant shall pay a privilege tax of \$6.25 and a license fee of \$6.88 per amusement device.

E. The license may be renewed by the licensee by payment to the City Clerk of the privilege tax and amusement device license fee in effect at the time of renewal and updating any information that has changed since the filing of the original application.

§ 111-50. Posting and transferability of license.



A. Each amusement device license shall be posted by the licensee in a secure manner on the amusement device.

B. Amusement device licenses shall be nontransferable.

§ 111-51. Revocation of license; hearing; appeal.

A. If the amusement device licensee fails to pay the appropriate license fee and privilege tax as specified in § 111-49 or otherwise fails to comply with the provisions of this Part 2, the license shall be subject to revocation by the Building Commissioner. The revocation shall occur only upon a hearing conducted by the Building Commissioner.

B. The licensee shall be given 10 days' written notice of the date of the hearing, and the notice shall state the basis for revocation. At the hearing, the licensee is permitted to submit any information he deems pertinent.

C. A licensee can appeal the revocation of an amusement device license to the Board.

Article VII. Game Rooms and Other Amusement Devices

§ 111-52. Special use permit required; location restrictions.

A. Any person who owns, maintains or has under his control or plans to own, maintain or control a game room or who places or proposes to place on any premises an amusement device with a video rating of "M" (mature, for ages 17 and up); for more violence, strong language and mature sexual themes); "AO" (for adults over 18 years of age only; which may contain graphic sex and violence); "4" in either areas of violence, nudity/sex or language; "strong animated violence;" "strong life like violence;" "strong sexual content;" "strong language;" or the equivalent thereof, within the City of Albany shall obtain a special use permit unless exempt pursuant to § 111-60 of this Part 2.

B. Game rooms shall be allowed only in C-2 (Highway Commercial) and C-3 (Central Business) Zone Districts as a special use.

§ 111-53. Application for special use permit; review by Building Department.

A. An application for a special use permit shall be filed with the Building Department and shall specify the following:

(1) All the information required by § 111-48A(1) through (6) and B of this Part 2.

(2) The floor area of the game room and the maximum number of amusement devices which the applicant proposes to place in the game room.

B. If the establishment of the game room necessitates construction, reconstruction, alteration or remodeling of the premises so that a building permit is required, the Building Department shall review the plans for the physical work and verify, in writing, to the Board that the contemplated work will comply with the Uniform Fire Prevention and Building Code.

§ 111-54. Inspection; issuance or denial of special use permit.

A. The Building Commissioner shall review the application and, with the above advice and assistance of such other City personnel as may be necessary, inspect the premises to ascertain whether the premises complies with the applicable fire, housing, building, sanitary, electrical and plumbing codes, state or local. The inspection and review shall be completed within a reasonable time after the receipt of the copy of the application by the Building Commissioner, including, if physical work on the premises is contemplated, the written verification by the Commissioner as set forth in § 111-53B.

B. Upon completion of the inspection and report by the Building Department, the application and report shall be forwarded to the Planning Department for scheduling before the Board in accordance with Chapter 375, Zoning.

~~C. No permit shall be granted unless the premises in which the game room is to be situated meets all requirements of fire, housing, building, sanitary, electrical and plumbing codes of the City and other applicable City or state laws, rules and regulations or ordinances.~~

~~§ 111-55. Procedure upon obtaining special use permit; fees.~~

~~Upon approval by the Board of a special use permit, the applicant must submit verification of this permit to the City Clerk and make application to license all amusement devices to be located in the applicant's game room and pay the applicable amusement device license fee and privilege tax.~~

~~§ 111-56. Posting and transferability of special use permit.~~

~~A. The special use permit must be conspicuously placed in the game room.~~

~~B. Permits shall be nontransferable.~~

~~§ 111-57. Revocation of special use permit; hearing; appeal.~~

~~A. Special use permits are subject to revocation by the Building Commissioner for violation of any provision of this Part 2. The revocation shall occur only after a hearing conducted by the Building Commissioner.~~

~~B. The permittees shall be given 10 days' notice of the date of such hearing, and such notice shall state the grounds therefor. At such hearing, the permittee may submit pertinent information on his own behalf.~~

~~C. The permittee can appeal a revocation of a special use permit to the Board.~~

~~§ 111-58. Regulations.~~

~~A. The licensee shall not permit any person to bet or gamble on the premises in which the game room is situated or an amusement device is located.~~

~~B. The licensee shall at all times maintain good order and shall not permit any disturbance, congestion or loitering upon or outside the premises in which the game room or an amusement device is located.~~

~~C. No game room shall be without sanitary facilities as required by local or state law nor contain any fire, safety or health hazard prohibited by local or state law.~~

~~D. No licensee shall refuse to cooperate fully with the City Clerk, any law enforcement officer or agency or the City Building Commissioner.~~

~~E. Possession or consumption of alcoholic beverages, except upon premises licensed for on-premises possession or consumption, is prohibited.~~

~~F. The owner or operator of a game room shall not allow it to be open or used unless it is under the control and supervision of a person at least 18 years of age who shall ensure that it is operated in compliance with these regulations.~~

~~G. No cash awards shall be offered or given in any contest, tournament, league or individual play on any amusement device.~~

~~§ 111-59. Complaints; penalties for offenses.~~

~~A. Complaints. Whenever a violation of this Part 2 occurs or is suspected, any person may file a complaint. Such complaint shall be in writing and shall be filed with the Building Commissioner. The complaint shall be investigated within a reasonable time. Based upon results of the investigation, the permit may be subject to revocation as provided in § 111-57.~~

~~B. Violations. Any person violating any of the provisions of this Part 2 shall be guilty of an offense, punishable by a fine which shall not exceed \$250 in an amount or by imprisonment not to exceed 15 days, or both such fine and imprisonment. Each week's continuous violation shall constitute a separate additional violation.~~

~~§ 111-60. Exemptions from obtaining special use permits.~~

~~A. The operation or maintenance of eight or fewer amusement devices shall be allowed without the necessity of obtaining a special use permit.~~

~~B. The special use permit shall not have application to the possession or operation of amusement devices by nonprofit corporations, associations or groups, unless the amusement devices are available for use by the general public on a regular basis.~~

~~C. All persons exempt from obtaining special use permits pursuant to Subsection A or B above are required to obtain amusement device licenses and pay the necessary amusement device license fee and privilege tax as provided by this Part 2.~~

~~§ 111-61. Effect on existing game rooms.~~

~~If, before the effective date of this Part 2, any person shall have on premises under his control more than three amusement devices in any area other than C-2 and C-3 Zone districts, such game room shall be permitted without a special use permit. Such person, however, shall not possess or maintain on the premises under his control any additional amusement devices on or after the effective date of this Part 2.~~

~~§ 111-61.1. Removal of amusement devices.~~

~~Except as otherwise provided herein, any amusement device licensed under this chapter of the Code of the City of Albany and remaining on any premises as of the date this amendment becomes effective shall be removed within 30 calendar days therefrom by the licensee thereof in any case in which no special permit has been issued to allow the placement of such amusement device as required by § 111-52.~~

~~§ 111-62. Severability.~~

~~If any section or provision of this Part 2 shall at any time be declared to be unconstitutional, it is the express legislative intent that no other section or provision hereof be thereby affected.~~

~~§ 111-63. When effective.~~

~~This Part 2 shall take effect immediately.~~

Part 32. Cabarets

Article VIII. Cabaret Licenses

§ 111-65. Definitions.

As used in this article, the following terms shall have the meanings indicated:

RESTAURANT

Shall have the same meaning as that contained in § ~~375-7~~ of Chapter ~~375~~ of this Code.

TAVERN

Shall have the same meaning as that contained in § ~~375-7~~ of Chapter ~~375~~ of this Code.

§ 111-73. Appeal regarding issuance of license.

Within 30 days of the determination by the City Clerk regarding the issuance or renewal of a license, the applicant, any of the City departments listed § ~~111-69C(1)~~ and/or a member of the Common Council may file an appeal of the decision with the Board of Zoning Appeals pursuant to ~~Article IV~~ of Chapter ~~375~~ of the Code of the City of Albany. The Board of Zoning Appeals shall conduct a de novo review of the determination of the City Clerk.

§ 111-78. Appeal after hearing of suspension or revocation.

Within 30 days of a determination by the City Clerk as a result of a hearing pursuant to § ~~111-77~~, the cabaret or catering establishment owner, or its designee, any of the City departments listed § ~~111-69C(1)~~ and/or a member of the Common Council may file an appeal of the decision with the Board of Zoning Appeals pursuant to ~~Article IV~~ of Chapter ~~375~~ of the Code of the City of Albany.

**Section 4. Chapter 133 of the Code of the City of Albany (Building Construction) is amended as follows:**

Chapter 133. Building Construction

Part 1. Building Code

Article II. Preliminary Requirements

§ 133-20. Demolition or boarding up of buildings.

A. A permit shall be obtained for the demolition or boarding up of a building or part thereof. No permit shall be issued unless the applicant executes and delivers to the Director of Buildings a bond executed by a solvent surety company authorized to transact business in the State of New York, in an amount to be fixed by the Director of Buildings, providing for the holding harmless of the City of Albany and all its officers and departments from all damages which they may sustain or be liable for by reason of the demolition or boarding up of the structures for which the permit is applied, and the applicant shall also furnish the Director of Buildings with satisfactory evidence that the applicant carries insurance in a proper amount covering property damage to adjoining property and public liability insurance for the protection of the public.

B. Before any such permit is issued, the applicant is required by law to secure workers' compensation insurance and shall file with the Director of Buildings proper evidence that such insurance has been secured.

C. The permit when issued shall provide that the applicant will comply with all the laws of the State of New York and with the laws and ordinances of the City of Albany, and for failure so to do, the Director of Buildings may revoke such permit. Said permit may also be revoked without notice if in the opinion of the Director of Buildings or the Commissioner of the Department of General Services the demolition or boarding up of the building is being conducted in a dangerous or unsafe manner.

D. Notwithstanding the foregoing provisions of this section, no application for demolition under this section shall be approved without prior review and approval of the Planning Board established in accordance with Chapters 42 and 375 of the Code of the City of Albany.

E. ~~Submittal requirements for demolition application; planning standards and criteria.~~

~~(1) In order to facilitate review in accordance with Subsection D of this section, every application for demolition shall include standard submittal requirements as determined by the Director of Buildings in consultation with the Commissioner of Planning. Applications must include information necessary to allow the Planning Board to review the building or use replacing the demolished structure, if applicable, and will include, at a minimum:~~

~~(a) Building facade elevations;~~

~~(b) Site plans;~~

~~(c) Landscaping plans; and~~

~~(d) Existing and proposed first floor elevations, but may also include, and not be limited to, sections, floor plans and grading plans.~~

~~(2) Any and all zoning approvals required for the proposed building shall be specified. All drawings and plans shall show both existing and proposed facade elevations and clearly identify all new construction and label all materials as new or existing. Complete photos of the exiting structure's exterior shall be provided. Additional information may be required by the Planning Board as deemed necessary to determine conformity with planning standards. Planning standards and criteria can include, but not be limited to:~~

~~(a) Consistency with the City of Albany Comprehensive Plan;~~

- ~~(b) Neighborhood and district plans; and/or~~
- ~~(c) City or regional planning objectives; and~~
- ~~(d) Review by the City's Preservation Planner.~~

~~F. In determining whether a demolition permit should be granted, the Planning Board shall consider the following:~~

- ~~(1) The age and condition of the building;~~
- ~~(2) Its architectural, archaeological or historic importance;~~
- ~~(3) Its importance to the streetscape and the surrounding neighborhood;~~
- ~~(4) The cost to maintain or rehabilitate the building; and~~
- ~~(5) The public health and safety.~~

~~G. A copy of any application for demolition submitted under this section shall also be submitted by the Director of Buildings upon receipt to the Common Council member within whose ward the demolition is proposed.~~

#### § 133-21. Demolition for erection of new structure or new use.

When a building is to be demolished to permit the erection of a new structure or for purposes of a new use, such fact shall be stated in the application for such permit. Where a new structure or new use requires approval from the Board of Zoning Appeals in accordance with Chapter 375 of the Code of the City of Albany, a permit shall not be issued until such Board has granted necessary approvals for the proposed new structure or new use.

### Part 2. Building Construction

#### Article XIV. Stormwater Management and Erosion Control

##### § 133-100. Findings of fact.

A. Development of real property and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition.

B. This stormwater runoff contributes to increased quantities of waterborne pollutants, including siltation of aquatic habitat for fish and other desirable species.

C. Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat. Improper clearing of vegetation and burial of vegetative and other wastes can result in unstable soil conditions and the production of noxious gases through decomposition of said wastes.

D. Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff, thereby increasing streambank erosion and sedimentation.

E. Substantial economic losses can result from these adverse impacts on the waters of the municipality.

F. Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from development activities.

G. The regulation of stormwater runoff discharges from real property activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety.

H. Regulation of development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

##### § 133-101. Purpose.

The purpose of this article is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact above. This article seeks to meet those purposes by achieving the following objectives:

A. Meet the requirements of minimum measures 4 (construction runoff) and 5 (postconstruction maintenance) of the SPDES general permit for stormwater discharges from municipal separate stormwater sewer systems (MS4s), Permit No. GP-02-02 or as amended or revised.

B. Require work on real property to conform to the substantive requirements of the New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) general permit for construction activities GP-02-01 or as amended or revised.

C. Minimize increases in stormwater runoff from activities on real property in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels.

D. Minimize or decrease pollution caused by stormwater runoff from activities on real property which would otherwise degrade local water quality.

E. Minimize or decrease the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable.

F. Reduce or decrease stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety. Specific consideration of stormwater runoff shall be provided to critical watersheds.

G. Eliminate unstable soil conditions and the production of noxious gases which result from improper stormwater practices, improper grading practices, improper clearing of vegetation and the burial of vegetative and other wastes.

#### § 133-102. Definitions.

The terms used in this article or in documents prepared or reviewed under this article shall have the meaning as set forth in this section. Any conflict between a definition provided elsewhere in the City Code and this article shall be resolved in favor of the definition provided below.

#### AGRICULTURAL ACTIVITY

The activity of an active farm, including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities.

#### BUILDING

Any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than 100 square feet of area.

#### CHANNEL

A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

#### CLEARING

Any activity that removes the vegetative surface cover.

#### DEC

The New York State Department of Environmental Conservation.

#### DESIGN MANUAL

The New York State Stormwater Management Design Manual, as amended. This manual serves as the official guide for stormwater management principles, methods and practices.



## **EROSION CONTROL MANUAL**

The New York Standards and Specifications for Erosion and Sediment Control manual, as amended. This is commonly known as the "Blue Book."

## **IMPERVIOUS COVER**

Surfaces, improvements and structures that cannot effectively be infiltrated by rainfall, snowmelt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

## **INDUSTRIAL STORMWATER PERMIT**

A State Pollutant Discharge Elimination System permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

## **INFILTRATION**

The process of percolating stormwater into the subsoil.

## **JURISDICTIONAL WETLAND**

An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as "hydrophytic vegetation."

## **LAND DEVELOPMENT ACTIVITY**

An activity, including clearing, grading, excavating, soil disturbance or placement of fill, that results in land disturbance of equal to or greater than one acre, or an activity disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules.

## **LANDOWNER**

The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

## **MAINTENANCE AGREEMENT**

A document which provides for long-term maintenance of stormwater management practices. It is anticipated this document will be recorded in the Albany County Clerk's office and will act as a property deed restriction or encumbrance.

## **NONPOINT SOURCE POLLUTION**

Pollution from any source other than from any discernible, confined, and discrete conveyances and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

## **PHASING**

Clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

## **POLLUTANT OF CONCERN**

Sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

## **PROJECT**

Any construction or development activity upon real property.

## **RECHARGE**

The replenishment of underground water reserves.

## **SEDIMENT CONTROL**

Measures that prevent sediment from leaving the site.

### **SENSITIVE AREAS**

Cold-water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, habitats for threatened, endangered or special concern species.

### **SMP**

See "stormwater management practices."

### **SPDES**

The New York State Pollutant Discharge Elimination System.

### **SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01**

An SPDES permit issued to developers of construction activities to regulate disturbance of one or more acres of land.

### **SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS GP-02-02**

An SPDES permit issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA-established water quality standards and/or to specify stormwater control standards.

### **STABILIZATION**

The use of practices that prevent exposed soil from eroding.

### **STOP-WORK ORDER**

An order issued which requires that all construction activity on a site be stopped.

### **STORMWATER**

Rainwater, surface runoff, snowmelt and drainage.

### **STORMWATER HOTSPOT**

A land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on monitoring studies.

### **STORMWATER MANAGEMENT**

The use of structural or nonstructural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

### **STORMWATER MANAGEMENT FACILITY**

One or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

### **STORMWATER MANAGEMENT OFFICER**

The Zoning Officer of the City of Albany, as designated in this chapter, shall act as the Stormwater Management Officer, and as such, and together with the City Engineer and Code Enforcement Director, shall accept and review stormwater pollution prevention plans, forward the plans to the applicable department, inspect stormwater management practices, and enforce this article.

### **STORMWATER MANAGEMENT PRACTICES (SMPs)**

Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

### **STORMWATER POLLUTION PREVENTION PLAN (SWPPP)**

A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

### **STORMWATER RUNOFF**

Flow on the surface of the ground resulting from precipitation.

### **SURFACE WATERS OF THE STATE OF NEW YORK**

Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the State of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons, which also meet the criteria of this definition are not waters of the state. This exclusion applies only to man-made bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

**SWPPP (ALSO KNOWN AS "SWIPP")**

See "stormwater pollution prevention plan."

**WATERWAY**

A channel that directs surface runoff to a watercourse or to the public storm drain.

**§ 133-103. Applicability.**

**A.** This article shall be applicable to all real property within the City of Albany.

**B.** All land development activities subject to subdivision and/or site plan review and approval under this chapter shall be reviewed subject to the standards contained in this article. In this instance, the SWPPP shall be submitted along with the subdivision and/or site plan application.

**C.** All land development activities not subject to subdivision and/or site plan review shall be required to submit an SWPPP to the Stormwater Management Officer, who shall review the SWPPP for compliance with the requirements of this article. Regardless of the size of the land development activity, at a minimum an erosion and sediment control plan must be filed (and approved) if fill is deposited within 100 feet of a stream, surface water or wetland. A plan is also needed if fill is going to be deposited on a slope of 15° or more or if filling in excess of 30 cubic yards at any one time on a parcel.

**§ 133-104. Exemptions.**

The following activities are exempt from the permit requirements under this article. However, even those projects which are exempt from the permit requirements must meet the standards set forth in this article.

**A.** Agricultural activity as defined in this article.

**B.** Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a stormwater management facility.

**C.** Repairs to any Stormwater Management practice or facility deemed necessary by the stormwater management Officer.

**D.** Cemetery graves.

**E.** Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.

**F.** Emergency activities immediately necessary to protect life, property or natural resources.

**G.** Activities of an individual engaging in home gardening by growing flowers, vegetables and other plants primarily for use by that person and his or her family.

**H.** Landscaping and horticultural activities in connection with an existing structure that does not change the drainage patterns.

**I.** Creation or restoration of wetlands pursuant to a state or federal wetlands permit.

**§ 133-105. Stormwater pollution prevention plans.**

A. No approval of a land development activity shall be issued until a stormwater pollution prevention plan (SWPPP) has been accepted in accordance with the specifications in this article.

B. All SWPPPs shall, at a minimum, have a sediment and erosion control plan which shall provide the following background information and erosion and sediment controls. Development within impaired watersheds or where a five-acre variance request is submitted to the DEC may require additional data.

(1) Background information about the scope of the project, including location, type and size of project, and preconstruction photographs of the site and immediate downstream conditions (digital preferred).

(2) Site map/construction drawing(s) for the project, including a general location map. The site map should be at a scale no smaller than one inch equals 100 feet (e.g., one inch equals 500 feet is smaller than one inch equals 100 feet). At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges(s).

(3) Description of the soil(s) present at the site.

(4) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five acres shall be disturbed at any one time unless pursuant to an approved SWPPP and DEC variance approval.

(5) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff.

(6) Description of construction and waste materials expected to be stored on site, with updates as appropriate, and a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response.

(7) Information regarding the location of disposal of any material to be removed from the site. Off-site disposal areas may not be within regulated wetlands, buffer zones, protected watercourse areas, or other environmentally sensitive areas unless applicable permits are obtained. The proposed method of any on-site processing and reuse of organic materials shall be specified and may require certification by a New York State registered professional engineer or landscape architect as a safe and effective means of disposal.

(8) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project closeout.

(9) A site map/construction drawing specifying the location(s), size(s) and length(s) of each erosion and sediment control practice.

(10) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins.

(11) Temporary practices that will be converted to permanent control measures.

(12) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place.

(13) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice.

(14) Name(s) of the receiving water(s).

(15) Delineation of SWPPP implementation responsibilities for each part of the site.

(16) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable.

(17) Any existing data that describes the stormwater runoff at the site.

(18) A slope stability analysis, if requested by the City Engineer, where grading is proposed on steep or slippage-prone slopes.

(19) A stormwater management report in accordance with the "Standard Format for Stormwater Management Plans and Reports," which is available at the office of the Stormwater Management Officer.

(20) A stormwater maintenance escrow agreement if the stormwater facilities are being conveyed to the City once they are installed and approved, or a stormwater control facility maintenance agreement if the stormwater facilities will remain privately owned. Either of these agreements can be obtained from the Stormwater Management Officer.

C. In addition to the SWPPP described above, land development activities meeting any of the three conditions below shall also be required to provide a report as to water quantity and water quality controls (postconstruction stormwater runoff controls):

(1) Stormwater runoff from project activity disturbing between one acre and five acres of land during the course of the project, exclusive of the construction of single-family residences and construction activities at agricultural properties; or

(2) Stormwater runoff from land development activities disturbing five or more acres; or

(3) Stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department's 303(d) list of impaired waters or a total maximum daily load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.

D. The additional report to be provided for postconstruction stormwater controls shall include:

(1) Description of each postconstruction stormwater management practice.

(2) Site map/construction drawing(s) showing the specific location(s) and size(s) of each postconstruction stormwater management practice.

(3) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms.

(4) Comparison of postdevelopment stormwater runoff conditions with predevelopment conditions.

(5) Dimensions, material specifications and installation details for each postconstruction stormwater management practice.

(6) Maintenance schedule to ensure continuous and effective operation of each postconstruction stormwater management practice.

(7) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property.

(8) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with this article.

E. If the land development activity meets either of the conditions described in Subsection C(2) or (3) of this section (activity disturbs five acres or more or runoff discharges a pollutant of concern to either an impaired water or a TMDL designated watershed), then the SWPPP shall be prepared by a landscape architect, certified professional in erosion and sediment control (CPESC), soil scientist, or professional engineer and must be signed by the professional preparing the plan who shall certify that the design of all stormwater management practices meet the requirements in this article.

F. Other environmental permits. The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

G. Contractor certification.

(1) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."

(2) The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

(3) The certification statement(s) shall become part of the SWPPP for the land development activity.

(4) A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

§ 133-106. Performance and design criteria; permitting process; deposit of escrow.

Every soil disturbance shall meet the criteria set forth in the New York Standards for Erosion and Sediment Control (also known as "the Blue Book"). Also, all land development activities shall be subject to all of the following performance and design criteria:

A. Technical standards. For the purpose of this article, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this article:

(1) New York Standards and Specifications for Erosion and Sediment Control (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the "Erosion Control Manual" or the "Blue Book.")

(2) The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the "Design Manual").

(3) The City of Albany Standard Format for Stormwater Management Plans and Reports.

B. Equivalence to technical standards. Where stormwater management practices are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth in the Design Manual, and the SWPPP shall be prepared by a landscape architect, certified professional in erosion and sediment control (CPESC), soil scientist or professional engineer.



C. Water quality standards. Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

D. Permitting process; additional standards.

(1) Applications shall be made on forms prescribed by the City, which shall be accompanied by the required fee, if any, established by the City.

(2) The Stormwater Management Officer shall review the application and act to approve, approve with modification, or deny the requested SWPPP.

(3) In the event that the submittal is denied, the applicant may have the decision reviewed by the Board of Zoning Appeals.

(4) The smallest practical area of land shall be exposed at any one time during the project.

(5) When land is exposed during development, the exposure shall be kept to the shortest practical period of time.

(6) To protect areas in excess of one acre exposed for a period over two weeks during development, the following controls shall be applied:

(a) Temporary vegetation, mulch, geotextiles, and/or emulsion shall be provided as needed to prevent soil erosion. Application of these materials shall be by approved equipment.

(b) On areas that will be exposed for short periods of time (daily), where weather conditions are conducive to airborne soil particles, a construction fence shall be installed, as directed by the SMO.

(c) On areas such as temporary roadways, when dry conditions prevail, the contractor shall be required to apply water or take other measures as required to prevent dust during daily construction activities.

(7) Sediment basins, debris basins, silting basins, silt fencing, or silt traps shall be installed and maintained to remove sediment from runoff waters on lands undergoing development.

(8) Permanent final vegetation and structures shall be installed as soon as practical in the development.

(9) The development plan should be fitted to the type of topography and soils so as to create the least erosion potentials.

(10) Wherever feasible, natural vegetation should be retained and protected.

(11) In areas of proposed fill, all existing vegetation and other organic material, including the root mat, shall be removed prior to placement of fill. The material shall be disposed of in an appropriate off-site facility or processed for reuse on site in a manner that will not be conducive to adverse effects of decomposition, such as the production of odors or of concentrations of noxious or explosive gases, or the creation of unstable subsurface conditions. The proposed method of on-site processing and reuse shall be specified in the permit application and may require certification by a licensed professional engineer as a safe and effective means of disposal.

(12) No vegetation or other waste materials shall be buried on the site.

(13) All fill placed on the site shall be as free of organic material as is practicable.

E. Deposit; performance of site work; inspection.

(1) To ensure that the site work is performed in accordance with the controls of this article, before obtaining approval the applicant shall deposit with the chief fiscal officer of the City of Albany a cash escrow as set forth in the fee schedule promulgated by the City.

(2) Said site work shall be performed and completed in accordance with the approved plan and schedule of vegetation removal and disposal, grading, construction operation and erosion control methods on file with the Stormwater Management Officer at the time of issuance of the approval.

(3) Upon completion of the site work set forth in the plan, the applicant will request the City Engineer or his/her designee to inspect the work; upon approval of the site work, the Engineer will direct the chief fiscal officer to release all of the applicant's money deposited pursuant to Subsection [E\(1\)](#) above.

(4) Upon the failure of the applicant to perform the site work in accordance with the site plan submitted as aforesaid, the City of Albany and/or its agents shall be permitted to enter upon the premises and complete the necessary site work and charge the cost of the site work to the funds on deposit with the chief fiscal officer pursuant to Subsection [E\(1\)](#) above, and the chief fiscal officer shall be authorized to pay any charge or charges approved by the City Engineer without further approval of the applicant. If the City should undertake completion of any site work upon the applicant's failure to do so, any sums remaining on deposit with the chief fiscal officer after completion of said site work shall be returned to the applicant.

[§ 133-107. Maintenance, inspection and repair of stormwater facilities.](#)

[A. Maintenance and inspection during construction.](#)

(1) The City Engineer or his/her designee shall have the power to make necessary inspections. The Engineer may employ, at his/her discretion, a construction inspector to act as his/her agent for the purpose of assuring satisfactory completion of permit requirements. The inspection provided may include, but not necessarily be limited to, all grading, drainage, stormwater management systems and erosion control measures and may include soil testing as necessary to determine compliance with the provisions of this article and the conditions of the approval.

(2) The City Engineer will determine an amount sufficient to defray the costs of such inspection. The applicant shall deposit said amount of moneys with the chief fiscal officer in an escrow account prior to the issuance of the approval. The City Engineer shall be authorized to pay the costs of inspection by his/her construction inspector from the moneys on deposit in said account and shall return to the applicant any such moneys, including interest, on balance in the account at the time of completion of the permitted site work, provided that all inspection costs have been paid. If the moneys on deposit prove to be insufficient for the costs of required inspections, the City Engineer shall require that the applicant deposit additional moneys in an amount sufficient to satisfy the costs of such additional inspections as may be required. If applicant fails to deposit additional moneys in a timely manner, any costs incurred by the City shall be charged to the applicant.

(3) The applicant or developer of the land development activity or its representative shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this article. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.

(4) For land development activities meeting any of the conditions set forth in [§ 133-105C](#) (project activity of between one acre and five acres of land during course of job, exclusive of one-family residences and construction activities at agricultural properties; stormwater runoff from land development activities disturbing five or more acres, or stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water or a TMDL designated watershed), the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every seven days and within 24 hours of any storm event producing 0.5 inch of precipitation or more. Inspection reports shall be maintained in a site logbook.

B. Maintenance easement. Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the City of Albany to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this article. The easement shall be recorded in the office of the Albany County Clerk after approval by the Corporation Counsel.

C. Maintenance after construction. The owner or operator of permanent stormwater management practices installed in accordance with this article shall ensure they are operated and maintained to achieve the goals of this article. Proper operation and maintenance also includes, as a minimum, the following:

(1) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this article.

(2) Written procedures for operation and maintenance and training new maintenance personnel.

(3) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with § [133-106C](#) (water quality standards).

D. Maintenance agreements. The City of Albany shall promulgate a formal maintenance agreement for stormwater management facilities which are going to be privately owned after construction. The agreement shall be binding on all subsequent landowners and recorded in the office of the Albany County Clerk as a deed restriction on the property prior to final plan approval. The standard maintenance agreement shall be on file in the office of the Stormwater Management Officer. The City of Albany Water Board, in lieu of a maintenance agreement, at its sole discretion, may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this article and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

#### § 133-108. Administration and enforcement; penalties for offenses.

A. Inspection.

(1) In addition to the DEC inspections required to be performed by the applicant, the City of Albany Stormwater Management Officer, or her designee, may require such inspections as necessary to determine compliance with this article and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this article and the stormwater pollution prevention plan (SWPPP) as approved. In addition, a preconstruction meeting is necessary and shall be held as directed by the Stormwater Management Officer. To obtain inspections, the applicant shall notify the City Engineer at least 48 hours before any of the following, as required by the stormwater management Officer:

(a) Start of construction.

(b) Installation of sediment and erosion control measures.

(c) Completion of site clearing.

(d) Completion of rough grading.

(e) Completion of final grading.

(f) Close of the construction season.

(g) Completion of final landscaping.

(h) Successful establishment of landscaping in public areas.

(2) If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted, except for site stabilization, until any violations are corrected and all work previously completed has received approval by the Stormwater Management Officer.

B. Inspection of stormwater facilities after project completion. Inspection programs shall be established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher-than-typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher-than-usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include but are not limited to reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other Stormwater Management Practices.

C. Submission of reports and record plans. The City of Albany Stormwater Management Officer may require monitoring and reporting from entities subject to this article as are necessary to determine compliance with this article. All applicants are required to submit record plans for any Stormwater Management Practices located on site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a licensed professional.

D. Right-of-entry for inspection. When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public stormwater system, the landowner shall grant to the City of Albany the right, and it shall be the right of the stormwater management Officer or his/her designee, to enter the property at reasonable times and in a reasonable manner for the purpose of inspection.

E. Construction completion guarantee. In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the City of Albany in its approval of the stormwater pollution prevention plan, the City may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the City of Albany as the beneficiary. The security shall be in an amount to be determined by the City based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the City of Albany, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one-year inspection has been conducted and the facilities have been found to be acceptable to the City. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.

F. Maintenance guarantee. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the City of Albany with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management

and erosion control facilities both during and after construction and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the City of Albany may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.

G. Recordkeeping. The City of Albany may require entities subject to this article to maintain records demonstrating compliance with this portion of the City Code. Upon request, such records shall be made available to the Stormwater Management Officer for inspection or copying.

H. Notice of violation.

(1) When the City of Albany determines that a project is not being carried out in accordance with the requirements of this article, it may issue a written notice of violation to the landowner. The notice of violation shall contain:

(a) The name and address of the landowner, developer, and/or applicant.

(b) The address, when available, or a description of the building, structure or land upon which the violation is occurring.

(c) A statement specifying the nature of the violation.

(d) A description of the remedial measures necessary to bring the project into compliance with this article and a time schedule for the completion of such remedial action.

(e) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed.

(f) A statement that the determination of violation may be appealed to the Board of Zoning Appeals by filing a written notice of appeal within 10 days of service of notice of violation by personal delivery or by certified mail to the last known address of the landowner, developer, and/or applicant.

(2) If it is certified by the Stormwater Management Officer that a bona fide emergency exists, the City shall have the right to cause any necessary remediation or repairs to be made to protect the public interests, and the costs assessed to the landowner, developer, and/or applicant pursuant to this article, upon notice and an opportunity to be heard. Where access to the property is denied by the landowner, a warrant shall be obtained from a court of competent jurisdiction.

I. Stop-work orders. The City of Albany may issue a stop-work order for violations of this article. Persons receiving a stop-work order shall be required to halt all work of any nature on the site, except those activities that address the violations leading to the stop-work order. The stop-work order shall be in effect until the City of Albany confirms that the project is in compliance and the violation has been satisfactorily addressed. Failure to address a stop-work order in a timely manner may result in civil, criminal or monetary penalties in accordance with the enforcement measures authorized in this article or otherwise pursuant to law.

J. Violations. Any land development activity that is commenced or is conducted contrary to this article may be restrained by injunction or otherwise abated in a manner provided by law.

K. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this article shall be guilty of a violation punishable by a fine not exceeding \$250 or imprisonment for a period not to exceed 15 days, or both, for a first offense; upon a conviction of a second or subsequent violation of this article within five years, a person shall be guilty of a misdemeanor punishable by a fine not less than \$350 nor more than \$5,000 or imprisonment for a period not to exceed six months, or both. Each five-day period of a continued violation shall constitute a separate violation and may be charged as such.



L. Withholding of certificate of occupancy. If any building or land development activity is installed or conducted in violation of this article, the Stormwater Management Officer may prevent the occupancy of said building or land.

M. Restoration of lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the City of Albany may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

§ 133-109. Fees for services.

The City of Albany may require any person undertaking activities regulated by this article to pay reasonable costs at prevailing rates for review of SWPPPs, inspections or SMP maintenance performed by City personnel or performed by a third party for the City of Albany.

**Section 5. Chapter 151 of the Code of the City of Albany (Commercial Standards) is amended as follows:**

Chapter 151. Commercial Standards

Article II. Exterior Maintenance, Safety, Sanitation and Appearance

§ 151-13. Appearance; general requirements.

A. Subject to the provisions of Subsection B hereof, the exterior of the premises and the condition of accessory structures shall be maintained so that the appearance of the premises and all buildings thereon shall reflect a reasonable level of maintenance or such higher standards as may be adopted as part of a plan of urban renewal by the City of Albany. The exterior of every structure or accessory structure (including fences, signs and storefronts) shall be maintained in good repair, and all surfaces thereof shall be kept painted or whitewashed where necessary for purposes of preservation and appearance. All surfaces shall be maintained free of broken glass, loose shingles, crumbling stone or brick, excessive peeling paint or other condition reflective of deterioration or inadequate maintenance to the end that the property itself may be preserved and safe and fire hazards eliminated.

B. Notwithstanding the provisions of Subsection A hereof, the brick or stone exterior of any building or structure shall not be treated or cleaned by sandblasting, wire brushing by machine, or any other procedure or process whereby sand, grit or other abrasive is used or applied by pressure alone or with other ingredients or solution to effect the removal of dirt, soot, paint or other matter or substance therefrom, except that paint or other matter deleterious to the structural and/or aesthetic integrity of the exterior of any building may, upon permission of the Commissioner of Buildings, be removed by such abrasive or pressure methods. In granting such permission, the Commissioner shall determine and consider the machinery, equipment, materials, supplies, manner and method of cleaning proposed, the age, structural composition and general condition of the building involved, the nature of the material sought to be removed and the practical necessity thereof, together with any other factors and/or circumstance that may, on a case-by-case basis, be deemed relevant. The above exception shall not apply to those buildings:

(1) Under the jurisdiction of the ~~Capitol Hill Architectural Review~~ Historic Resources Commission.

(2) Listed on the National Register of Historic Places.

~~(3) Under the jurisdiction of the Historic Sites Commission.~~

~~(4)~~ (3) Otherwise specifically designated historically or architecturally significant.

§ 151-15. Signs and billboards.



A. All permanent signs and billboards exposed to public view permitted by reason of other regulations or as a lawful nonconforming use shall be maintained in good repair. Any signs which have excessively weathered or faded or those upon which the paint has excessively peeled or cracked shall, with their supporting members, be removed forthwith, or put into a good state of repair. All nonoperative or broken electrical signs shall be repaired or shall, with their supporting members, be removed forthwith.

B. ~~Except for "for rent" signs, any temporary sign or other paper advertising material glued or otherwise attached to a window or windows or otherwise exposed to public view shall be removed:~~

~~(1) At the expiration of the event or sale for which it is erected.~~

~~(2) Within 60 days after erection, whichever shall sooner occur.~~

C. ~~Except during the course of repairs or alterations, no more than thirty three and one-third percent (33 1/3%) of the square footage of any single window or single window display area shall be devoted to signs or other temporary advertising material attached to said window or windows or otherwise exposed to public view.~~

#### § 151-20. Vacant lots.

All vacant lots in commercial districts as defined by the Zoning Ordinance of the City of Albany<sup>(H)</sup> Chapter 375 shall:

A. Be graded and drained so that no mud or gravel is washed across a public sidewalk.

B. Have the adjoining sidewalks cleared of snow and ice.

C. Be landscaped and maintained or surrounded by a fence, wall or hedge of a height and material as approved by the Commissioner of Buildings. Said fence, wall or hedge shall also be maintained in good condition.

#### § 151-21. Parking lots.

A. ~~Screening and landscaping. Off street parking areas for more than five vehicles and off street loading areas shall be effectively screened on each side which adjoins or faces premises situated in any residential district (as defined by the Zoning Ordinance of the City of Albany<sup>(H)</sup>) or institutional premises or a City street by a fence or wall six feet high, or a visual screen consisting of evergreen hedges or shrubs planted as a staggered double row spaced at intervals of not more than six feet and maintained in good condition, except that said screening may be less than six feet in height where it is desirable for security purposes to be able to see into the lot from the sidewalk.~~

~~(H) Editor's Note: See Ch. 375, Zoning.~~

B. ~~Paving and delineation. Off street parking areas for more than five vehicles shall be paved and each space delineated.~~

C. ~~Existing off street parking areas for more than five vehicles shall conform to § 151-21A and B by January 1, 1973. Screening and paving plans shall first be reviewed and application made for a building permit from the Commissioner of Buildings. All lots not in conformance with this chapter shall be subject to a fine of \$1 per day per parking space until the lot is brought into conformance.~~

**Section 6. Chapter 181 of the Code of the City of Albany (Environmental Quality Review) is amended as follows:**

#### Chapter 181. Environmental Quality Review

##### § 181-1. Legislative intent. Authority, purpose and intent.

A. It is the intention of the Common Council that the provisions of Article 8 of the Environmental Conservation Law (hereinafter referred to as "SEQR") and the regulations of the Department of Environmental Conservation promulgated thereunder as set forth in Part 617 of Chapter VI of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (hereinafter referred to as "Part 617") be implemented in the City of Albany. This chapter shall be known as the "Environmental Review Ordinance."

B. It is the further intention of the Common Council that the provisions of SEQR and Part 617 should be implemented and adopted by reference, unless otherwise set forth herein, as from time to time amended. This chapter is enacted pursuant to Article 8 of the New York Environmental Conservation Law and 6 NYCRR 617, State Environmental Quality Review (SEQR) regulations.

C. It is the further intention of the Common Council that the implementation of SEQR and Part 617 pursuant hereto by any agency of the City of Albany shall in no way be more protective of the environment than the implementation mandated by SEQR and Part 617, as from time to time amended. The basic purpose of this chapter is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of the City at the earliest possible time. To accomplish this goal, this chapter requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.

D. It is the further intention of the Common Council that the terms and words used herein shall have the same meanings as such terms and words are defined in SEQR and Part 617, unless the context requires a different meaning. This chapter shall supplement 6 NYCRR 617. Where there is a conflict between this chapter and 6 NYCRR 617, 6 NYCRR 617 shall supersede this chapter. § 181-2. Environmental Quality Review Board. Definitions.

A. There is hereby created in and for the City of Albany an Environmental Quality Review Board with the following duties and powers:

(1) To act as a clearing house and provide assistance to any agency of the City of Albany in its attempts to comply with and implement SEQR and Part 617.

(2) To coordinate the efforts of the various agencies of the City of Albany and act as the lead agency for the City of Albany in any action which involves more than one (1) such agency.

(3) To adopt and distribute long and short environmental assessment forms.

(4) To carry out the provisions of Part 617.8 through 617.12 upon the determination of any agency of the City of Albany or State of New York that any action within the meaning of Part 617 is either a Type I or unlisted action likely to have a substantial impact upon the environment.

(5) To adopt for the City of Albany and its agencies a list of Type II actions in addition to those set forth in Part 617.13.

(6) To adopt, after public hearing, such regulations as may be necessary to fulfill the mandates of this legislation.

(7) To adopt a schedule of fees and costs in accordance with Part 617.17.

As used in this chapter, the following terms shall have the following meanings:

### ACTIONS

- (1) Projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource

or structure that are directly undertaken by an agency; or involve funding by an agency or require one or more new or modified approvals from any agency or agencies;

- (2) Agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions;
- (3) Adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; and
- (4) Any combination of the above.

#### AGENCY

A state or local governmental unit, including but not limited to the Common Council, departments, divisions, agencies, commissions, boards and officers.

#### APPROVAL

A discretionary decision by an agency to issue a permit, certificate, license, lease or other entitlement or to otherwise authorize a proposed project or activity.

#### CITY

The City of Albany.

#### CONDITIONED NEGATIVE DECLARATION (CND)

A negative declaration issued by a lead agency for an unlisted action involving an applicant, in which the action as initially proposed may result in one or more significant adverse environmental impacts; however, mitigation measures identified and required by the lead agency will modify the proposed action so that no significant adverse environmental impacts will result.

#### DIRECT ACTION or DIRECTLY UNDERTAKEN ACTION

An action planned and proposed for implementation by an agency. Direct actions include but are not limited to capital projects, promulgation of agency rules, regulations, laws, codes, ordinances or executive orders and policy-making which commits an agency to a course of action that may affect the environment.

#### ENVIRONMENTAL ASSESSMENT FORM (EAF)

A form used by an agency to assist it in determining the environmental significance or nonsignificance of actions. A properly completed EAF must contain enough information to describe the proposed action, its location, its purpose and its potential impacts on the environment.

#### ENVIRONMENTAL IMPACT STATEMENT (EIS)

A written document which provides a means for agencies, project sponsors and the public to systematically consider significant adverse environmental impacts, alternatives and mitigation. An EIS facilitates the weighing of social, economic and environmental factors early in the planning and decisionmaking process.

### INTERESTED AGENCY

An agency that lacks the jurisdiction to fund, approve or directly undertake an action but wishes to participate in the review process because of its specific expertise or concern about the proposed action. An interested agency has the same ability to participate in the review process as a member of the public.

### INVOLVED AGENCY

An agency that has jurisdiction by law to fund, approve or directly undertake an action. If an agency will ultimately make a discretionary decision to fund, approve or undertake an action, then it is an involved agency, notwithstanding that it has not received an application for funding or approval at the time the SEQR process is commenced. The lead agency is also an involved agency.

### MINISTERIAL ACT

An action performed upon a given statement of facts in a prescribed manner imposed by law without the exercise of any judgment or discretion as to the propriety of the action, such as the granting of a hunting or fishing license.

### LEAD AGENCY

An agency principally responsible for undertaking, funding or approving an action, and therefore responsible for determining whether an environmental impact statement is required in connection with the action and for preparation and filing of the statement if one is required.

### NEGATIVE DECLARATION

A written determination by a lead agency that the implementation of the action as proposed will not result in any significant adverse environmental impacts.

### POSITIVE DECLARATION

A written statement prepared by the lead agency indicating that implementation of the action as proposed may have a significant adverse impact on the environment and that an environmental impact statement will be required. Positive declarations must be prepared, filed and published in accordance with 6 NYCRR 617.7 and 617.12.

### SEGMENTATION

The division of the environmental review of an action such that various activities or stages are addressed under this chapter as though they were independent, unrelated activities needing individual determinations of significance.

~~B. The Environmental Quality Review Board shall consist of the Mayor, the President of the Common Council, the Director of City Planning, the Albany Urban Renewal Agency Executive Director and the Corporation Counsel. Any member of the Board may from time to time designate a representative to attend in the member's absence any meeting of the Board. All other terms shall have the meaning as set forth in 6 NYCRR 617.2.~~

~~§ 181-3. Compliance required. General rules.~~

No action, other than an exempt, excluded or Type II action, shall be carried out, approved or funded by any agency, board, body or officers of the City of Albany, unless it has complied with this chapter. The general rules shall be those found in 6 NYCRR 617.3.

~~§ 181-4. Preparation of environmental assessment form or appropriate substitute. Type I actions.~~

~~A. An environmental assessment form (hereafter referred to as an "EAF") shall be prepared by or on behalf of any agency, board, body or officer of the City of Albany in connection with any Type I action such agency, board, body or officer contemplates or proposes to carry out directly. The purpose of the list of actions identified as Type I is to identify for City agencies, project sponsors and the public those actions that may have a significant adverse impact on the environment and that are more likely to require the preparation of an environmental impact statement than Unlisted actions. This Type I list is not exhaustive. However, the fact that an action or project has been listed as Type I action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS. For all individual actions which are Type I or Unlisted, the determination of significance must be made by comparing the impacts which may be reasonably expected to result from the proposed action with the criteria listed in 6 NYCRR 617.7(c).~~

~~B. For an unlisted action, an EAF in a short or long form may be prepared to facilitate a preliminary determination of environmental significance. The following actions are Type I if they are to be directly undertaken, funded or approved by an agency.~~

~~(1) the adoption of a land use plan, comprehensive resource management plan or the initial adoption of a municipality's comprehensive zoning regulations;~~

~~(2) the adoption of changes in the allowable uses within any zoning district, affecting 25 or more acres of the district;~~

~~(3) the granting of a zoning change, at the request of an applicant, for an action that meets or exceeds one or more of the thresholds given elsewhere in this list;~~

~~(4) the acquisition, sale, lease, annexation or other transfer of 100 or more contiguous acres of land by a state or local agency;~~

~~(5) construction of 250 or more new residential units~~

~~(6) a project or action that involves the physical alteration of 10 acres;~~

~~(7) a project or action that would use ground or surface water in excess of 2,000,000 gallons per day;~~

~~(8) parking for 1,000 vehicles;~~

~~(9) a facility with more than 100,000 square feet of gross floor area;~~

~~(10) any structure exceeding 100 feet above original ground level;~~

~~(11) any Unlisted action (unless the action is designed for the preservation of the facility or site) occurring wholly or partially within, or substantially contiguous to any historic building, structure, facility, site or district or prehistoric site that is listed on the National Register of Historic Places, or that has been proposed by the New York State Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination for inclusion in the National Register, or that is listed on the State Register of Historic Places;~~

~~(12) any Unlisted action, that exceeds 25 percent of any threshold in this section, occurring wholly or partially within or substantially contiguous to any publicly owned or operated parkland, recreation area or designated open space, including any site on the Register of National Natural Landmarks pursuant to 36 CFR part 62, 1994; or~~

~~(13) any Unlisted action that exceeds a Type I threshold established by an involved agency pursuant to section 617.14 of this Part.~~

~~C. An application for permit or funding of a Type I action shall be accompanied by an EAF and for an unlisted action may be accompanied by a short or long form EAF as may be needed to assist the appropriate agency or Environmental Quality Review Board in making a preliminary determination of environmental significance.~~

~~D. An applicant may prepare a draft environmental impact statement (hereinafter referred to as an "EIS") to accompany the application in place of the EAF.~~

~~E. In lieu of an EAF, the Environmental Quality Review Board may adopt different procedures for reviewing environmental significance of unlisted actions.~~

§ 181-5. Preliminary determination of environmental significance. Type II actions.

~~A. The appropriate agency or, in the case of the designation of it as the lead agency pursuant to §§ 181-3 through 181-9 hereof, the Environmental Quality Review Board shall make a preliminary determination of environmental significance of the action on the basis of the EAF, draft EIS or, with respect to unlisted actions, in accordance with its own procedures, as the case may be, and such other information it requires. Actions or classes of actions which have been determined not to have a significant adverse impact on the environment are classified as Type II actions. They do not require environmental impact statements or any other determination or procedure under this chapter.~~

~~B. Such determination shall be made within fifteen (15) days of the determination by the agency of whether the provisions of § 181-2 hereof apply with respect to the Environmental Quality Review Board or within fifteen (15) days of the receipt of all information the agency or board requires, whichever is later. The following are Type II actions:~~

~~(1) maintenance or repair involving no substantial changes in an existing structure or facility;~~

~~(2) replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes, unless such action meets or exceeds any of the thresholds in section 617.4 of this Part;~~

~~(3) repaving of existing highways not involving the addition of new travel lanes;~~

~~(4) street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities;~~

~~(5) maintenance of existing landscaping or natural growth;~~

~~(6) construction or expansion of a primary or accessory/appurtenant, nonresidential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities;~~

~~(7) routine activities of educational institutions, including expansion of existing facilities by less than 10,000 square feet of gross floor area and school closings, but not changes in use related to such closings;~~

~~(8) construction or expansion of a single-family, a two-family or a three-family residence on an approved lot including provision of necessary utility connections and the installation, maintenance and/or upgrade of a drinking water well and a septic system;~~

~~(9) construction, expansion or placement of minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density;~~

~~(10) extension of utility distribution facilities, including gas, electric, telephone, cable, water and sewer connections to render service in approved subdivisions or in connection with any action on this list;~~

~~(11) granting of individual setback and lot line variances;~~



- (12) granting of an area variance(s) for a single-family, two-family or three-family residence;
- (13) public or private best forest management (silvicultural) practices on less than 10 acres of land, but not including waste disposal, land clearing not directly related to forest management, clear-cutting or the application of herbicides or pesticides;
- (14) minor temporary uses of land having negligible or no permanent impact on the environment;
- (15) installation of traffic control devices on existing streets, roads and highways;
- (16) mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns;
- (17) information collection including basic data collection and research, water quality and pollution studies, traffic counts, engineering studies, surveys, subsurface investigations and soils studies that do not commit the agency to undertake, fund or approve any Type I or Unlisted action;
- (18) official acts of a ministerial nature involving no exercise of discretion, including building permits and historic preservation permits where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building or preservation code(s);
- (19) routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;
- (20) conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action;
- (21) collective bargaining activities;
- (22) investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt;
- (23) inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession;
- (24) purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, or other hazardous materials;
- (25) license, lease and permit renewals, or transfers of ownership thereof, where there will be no material change in permit conditions or the scope of permitted activities;
- (26) adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list;
- (27) engaging in review of any part of an application to determine compliance with technical requirements, provided that no such determination entitles or permits the project sponsor to commence the action unless and until all requirements of this Part have been fulfilled;
- (28) civil or criminal enforcement proceedings, whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order, or the exercise of prosecutorial discretion;
- (29) adoption of a moratorium on land development or construction;
- (30) interpreting an existing code, rule or regulation;
- (31) designation of local landmarks or their inclusion within historic districts;
- (32) emergency actions that are immediately necessary on a limited and temporary basis for the protection or preservation of life, health, property or natural resources, provided that such actions are directly related to the emergency and are performed to cause the least change or disturbance, practicable under the circumstances, to the environment. Any decision to fund, approve or

directly undertake other activities after the emergency has expired is fully subject to the review procedures of this Part;

(33) Grandfathered actions as set forth in 6 NYCRR 617.5(c)(34).

[§ 181-6. Procedure upon determination of nonsignificance. Initial review of actions and establishing lead agency.](#)

[A.](#) For Type I actions, a determination of nonsignificance shall be noticed and filed as provided in Part 617.10(b).

[B.](#) For unlisted actions, a determination of nonsignificance shall be sent to the applicant and maintained in accordance with Part 617.7(e) and 617.10(f).

[C.](#) After a determination of nonsignificance, the action, including one involving a permit or funding, shall be processed without further regard to SEQR, Part 617 or this chapter.

Procedures for the initial review of actions shall be as set forth in 6 NYCRR 617.6(a) and for establishing lead agency as set forth in 6 NYCRR 617.6(b).

[§ 181-7. Time limitation to file applications for approval or funding. Determining significance.](#)

The time of filing an application for approval or funding of an action shall commence to run from the date the preliminary determination of environmental nonsignificance is rendered or, if in lieu of an EAF the applicant prepares a draft EIS, from the date the applicant files a draft EIS acceptable to the appropriate agency or the Environmental Quality Review Board. Procedures and criteria for determining significance shall be those set forth in 6 NYCRR 617.7.

[§ 181-8. Preparation of environmental impact statement. Scoping.](#)

[A.](#) If the appropriate agency or the Environmental Quality Review Board determines that an EIS is required, the Environmental Quality Review Board shall proceed as provided in Part 617.8 and 617.10, and the individual agency shall refer the application to the Board for such action.

[B.](#) Commencing with the acceptance of the draft EIS by the Environmental Quality Review Board, the time for it to complete the SEQR process with respect to the same shall run concurrently with the time limitations applicable to processing the application for approval or funding of the action, and a public hearing on the draft EIS, if any, shall be held concurrently with any hearing to be held on such application.

[C.](#) The draft EIS shall be prepared by the applicant.

[D.](#) Failure by the applicant to prepare an EIS acceptable to the Environmental Quality Review Board shall, at the option of the Board, be deemed an abandonment and discontinuance of the application.

The scoping process shall be as set forth in 6 NYCRR 617.8.

[§ 181-9. Processing of review of actions involving federal agency. Preparation and content of environmental impact statements.](#)

Environmental review of actions involving a federal agency shall be processed in accordance with Part 617.16.

The procedures for preparing an environmental impact statement (EIS) shall be as set forth in 6 NYCRR 617.9(a). The content of EIS's shall be as set forth in 6 NYCRR 617.9(b).

[§ 181-10. Severability. Generic environmental impact statements.](#)

If any clause, sentence, paragraph, section or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in the operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. The description, purpose and procedures for generic EIS's shall be as set forth in 6 NYCRR 617.10.

[§ 181-11. Repealer. Decisionmaking and findings requirements.](#)

~~All ordinances or parts of ordinances and local laws or parts of local laws in conflict herewith are hereby repealed.~~ Decisionmaking and finding requirements shall be as set forth in 6 NYCRR 617.11.

[§ 181-12. ~~When effective.~~ Document preparation, filing, publication and distribution.](#)

~~This chapter shall be in full force and effect from and after its passage, approval, recording and publication as provided by law.~~ Document preparation, filing, publication and distribution requirements shall be as set forth in 6 NYCRR 617.12.

[§ 181-13. Fees and costs.](#)

Fees and costs for the preparation and review of draft and final EIS's shall be as set forth in 6 NYCRR 617.13.

[§ 181-14. Actions involving a federal agency.](#)

Action involving a federal agency shall be treated as set forth in 6 NYCRR 617.15.

[§ 181-15. Severability.](#)

If any provision of this chapter or its application to any person or circumstance is determined to be contrary to law by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other provisions of this chapter or the application to other persons and circumstances.

**Section 7. Chapter 197 of the Code of the City of Albany (Fire Prevention) is amended as follows:**

[Chapter 197. Fire Prevention](#)

[Article I. Fire Prevention Code](#)

[§ 197-13. Appeals.](#)

Any person aggrieved by a decision of the Building Commissioner may appeal such decision to the Board of ~~Building and Zoning Appeals~~ pursuant to Chapter ~~375, Zoning~~, of the Code of the City of Albany.

**Section 8. Chapter 211 of the Code of the City of Albany (Grading and Mining) is amended as follows:**

[Chapter 211. Grading and Mining](#)

[Article I. General Provisions](#)

[§ 211-1. Purpose.](#)

The purpose of this chapter is to safeguard life, limb, health, property and public welfare of the residents of the City of Albany by regulating and controlling the design, construction and quality of materials used in all grading and mining operations conducted within the City of Albany.

[§ 211-2. Scope; exceptions.](#)

A. No person shall grade, excavate or fill any land except as provided by this chapter. All provisions of this chapter shall be limitations for protection of life, limb, health, property and public welfare. If two (2) or more pertinent sections of this chapter are not consistent, those sections providing the greater safety to the public, in the opinion of the City Engineer, shall prevail.

B. The provisions of this chapter shall not govern the following:

(1) Work within the public right-of-way, dams and drainage structures constructed by or under contract with the City Engineer, Bureau of Public Works or the Department of Water and Water Supply of the City of Albany.

(2) Work accomplished under the auspices of and owned and controlled by the federal government or the State of New York.

(3) The depositing of rubbish or debris at any landfill owned or operated by the City of Albany.

#### § 211-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

#### APPROVED PLANS

Grading site plans signed and approved by the City Engineer of the City of Albany, New York.

#### CITY

The City of Albany, New York.

#### CITY ENGINEER

The authorized head of the Bureau of Engineering of the City of Albany.

#### EXCAVATION

Any act by which earth, sand, rock or any other similar material is cut into, dug, quarried, uncovered, removed, displaced, relocated or bulldozed and shall include the conditions resulting therefrom.

#### FILL

Any act by which earth, sand, gravel, rock or any other similar material is deposited, placed, pushed, pulled or transported to a place other than the place from which it was excavated, and shall include the conditions resulting therefrom.

#### GRADING

An excavation or fill or any combination thereof and shall include the conditions resulting from any excavation or fill.

#### GRADING PERMIT

~~A permit required by this chapter.~~

#### GRADING SITE PLAN

The site plans prepared to indicate the proposed grading operations.

#### GROUNDWATER

Subsurface water in a zone of saturation.

#### PROPERTY LINE

A line separating parcels of real property having separate legal descriptions.

#### PUBLIC RIGHT-OF-WAY

Any parcel of land appropriated for the free passage of the general public.

#### RETAINING WALL

Any wall resisting the lateral pressure of any retained liquid or solid.

#### SEEPAGE

The flow of water through soil masses caused by gravitational forces.

#### STORMWATER, GRADING, AND EROSION PERMIT

~~A permit required by this chapter.~~

#### § 211-4. Permit required; exceptions.

~~A.~~ No person shall commence or perform any grading and no person shall import or export any earth materials to or from any grading site without first having obtained a ~~permit therefor from the City Engineer's office~~ Stormwater, Grading, and Erosion Permit pursuant to Section 375-5(E)(12), unless the provisions of that Section provide an exception for the proposed activity.

B. A permit will not be required under any one (1) of the following conditions:

(1) The excavation or fill does not exceed two (2) feet in vertical depth at its deepest point measured from the original ground surface and does not exceed fifty (50) cubic yards of material on any one (1) lot; however, no fill shall be placed on a surface having a slope steeper than one (1) vertical to ten (10) horizontal, and no fill shall be placed that will alter the existing drainage pattern.

(2) An excavation below finished grade for basements, footings, swimming pools or any underground structure authorized by a valid building permit issued by the Building Department of the City of Albany. This exception shall not affect the applicability of this chapter regarding the requirement of a grading permit for any fill made with the material from such excavation exceeding fifty (50) cubic yards of material.

§ 211-5. Scope of permit; withholding of permit; compliance required.

A. Neither the issuance of a permit nor the approval by the City Engineer of any document shall constitute an approval of any violation of any provision of this chapter or of any other law or ordinance in effect within the City limits, and a permit or other document purporting to give authority to violate any law shall not be valid with respect thereto.

B. The City Engineer shall have the authority to withhold a grading permit where the proposed site is located in an area subject to slides or unstable soil. If the City Engineer determines that the proposed grading is not likely to be of such extent as to cause an immediate hazard on the proposed site, he may issue a permit upon receipt of a sworn affidavit which has been recorded in the office of the County Clerk, stating that the applicant is fully aware that the site is in an area subject to slides or unstable soil.

C. The City Engineer shall have the authority to withhold a grading permit where the proposed site is in an area subject to inundation. If it can be shown by authentic past records that any possible inundation is not likely to be of such extent as to be an immediate hazard to the site, he may issue a permit upon receipt of a sworn affidavit which has been recorded in the office of the County Clerk stating that the applicant is fully aware that the grading is in an area subject to inundation.

D. No owner of property or other person or agent in control of property shall permit or allow any grading made after the effective date of this chapter, and not expressly within the exceptions set forth in this chapter, to exist on such property unless a grading permit has been issued therefor.

§ 211-6. Obtaining a permit.

A. To obtain a permit, the applicant shall file an application on a form furnished by the City Engineer. One (1) complete application for each permit shall be filed.

B. Upon compliance with the provisions of this chapter, a permit shall be issued to the applicant.

(1) Whenever there has been a false statement or misrepresentation in the application as to a material fact on which the permit was based, or whenever the permit was issued in error and conditions are such that a permit should not have been issued, the permit shall be revoked.

(2) Expiration of permits. Every permit issued shall be valid for a period of one (1) year from the date thereof, provided that any permit shall expire on the 180th day from date of issuance if the work permitted thereunder has not been commenced. After expiration, a new permit shall be obtained before any work is done, and the fee therefor shall be the fee required for an original permit, determined by the total valuation of the uncompleted portion of the work.

C. If the holder of a grading permit presents satisfactory reasons for his failure to complete the work during the period of validity of the permit, the City Engineer, upon application by the permittee, may grant extensions of time reasonably necessary by reason of such difficulties. No

request for such extensions shall be considered after the date on which the permit would have otherwise expired.

D. Grading permits shall be presumed to incorporate the provision that the applicant, his agent, employees or contractor shall carry out the proposed work in accordance with the approved plans and with all requirements of this chapter and any other laws or regulations applicable thereto, whether specified or not.

E. If a permit has not been secured within six (6) months after plans have been submitted for review, no permit shall be issued until the plans have been rechecked and approved and the plan-checking fee paid for such rechecking. The City Engineer may waive this provision in instances where he is satisfied that the nature of the work involved makes it impractical to secure a permit within six (6) months after filing the plans.

#### § 211-7. Plans and specifications.

A site plan must be submitted to the City Engineer for his review and approval. The following items shall be included on the site plan:

A. A location plan at a scale of one (1) inch equals two thousand (2,000) feet showing all existing streets, public rights-of-way and true North within a radius of four thousand (4,000) feet of the site.

B. A site plan showing:

(1) The name and address of the owner and/or developer of the property.

(2) The boundary of the property described by angle and distance at a scale of one (1) inch equals one hundred (100) feet or larger, and all proposed property lines within the project.

(3) The existing and proposed contours at an interval of two (2) feet.

(4) The stamp, signature and address of the licensed engineer or land surveyor responsible for the preparation of the plans.

(5) Details of all drainage structures, including plan and profile of all storm drains or other proposed utilities.

(6) All existing utilities to be affected by the proposed grading.

(7) All drainage ditches, streams or existing drainage structures affected by the proposed grading.

(8) Location of top and toe of all cuts and fills.

(9) Location of all "daylight lines." ("Daylight lines" means the intersection of the cut or fill with the original ground surface.)

(10) Amount of cut and fill.

(11) Location and details of all retaining structures.

(12) Location of all soil borings and test pits. Two (2) copies of the soils report from a licensed soils engineer indicating type of soil, depth of soil, recommended angle of repose and required compacted density for the proposed usage.

(13) Location of trees twelve (12) inches and larger in diameter.

(14) Location and nature of the building or buildings proposed for the site.

(15) Location of disposal site for excess material and estimated dates for starting and completing grading work.

(16) All other details required by this chapter due to the specific type of grading to be done.

(17) Where fill material is to be delivered to a proposed site, or excess material is to be removed from the site over dedicated roads, these routes shall be specified by the City Engineer.



~~C.~~ The City Engineer may waive the requirement of the site plan or subsurface exploration as required by this section if he finds that the information on the application is sufficient to show that the work will conform to the provisions of this chapter and other relevant laws.

~~D.~~ The applicant shall submit four (4) copies of the plans and specifications with each application for a permit. The fees required for review shall also become due at the time the application is submitted.

#### § 211-8. Approval and permit issuance.

After the plans and specifications have been reviewed by the City Engineer or his authorized representative and are in compliance with the provision of ~~this chapter~~ Chapter 211 and Chapter 375 of the City Code and all other related laws, each sheet of every copy of the plans shall be signed by the City Engineer, subject to the following conditions:

A. ~~Permits issued under the requirements of this chapter~~ The issuance of a Stormwater, Grading, and Erosion Permit shall not relieve the applicant of responsibility for securing required permits for work to be done which is regulated by any other code, ordinance, law, department or division of the City of Albany.

B. The approval of any plans or specifications shall not be held to permit or to be an approval of the violation of any provision of ~~this chapter~~ Chapter 211 or Chapter 375 of the City Code.

C. Alteration of approved plans or specifications, unless authorized by the City Engineer, shall void the approval.

D. A signed set of plans and specifications issued to the applicant shall be kept at the site of the construction and shall be available to the City Engineer or his authorized representative at all times.

#### § 211-9. Enforcement; inspection; performance bond.

A. All construction or work for which a ~~permit~~ Stormwater, Grading and Erosion Permit has been ~~signed~~ issued shall be subject to inspection by the authorized representative of the City Engineer.

B. No person shall hinder or prevent any authorized representative of the City Engineer from entering and making a reasonable inspection of any site covered by a valid ~~grading permit~~ Stormwater, Grading and Erosion Permit or under construction for approval of a ~~grading permit~~ Stormwater, Grading and Erosion Permit.

(1) Whenever any construction or work is being done contrary to the provisions of ~~this chapter~~ Chapter 211 or Chapter 375 of the City Code, the City Engineer or his authorized representative shall issue a written notice to the responsible party to stop work on that portion of the site on which the violation has occurred. The notice shall state the nature of the violation, and no work shall be done on that portion until the violation has been rectified and approval obtained from the office of the City Engineer.

(2) Whenever any work on which called inspections are required as specified in this section is covered or concealed by additional work without first having been inspected, the City Engineer shall require, by written notice, that such work be exposed for examination. The work of exposing and recovering shall not entail expense to the City.

(3) When the City Engineer finds that any grading site or portion thereof has become a hazard to life or limb, health or safety of the persons in or around the site, he shall, by written notice, direct that the site, by a time specified in said notice, be restored to a condition of stability or safety. No person shall occupy the site in question until the hazard has been rectified to the satisfaction of the City Engineer and notice of approval has been received in writing from him.

(4) The permittee or his agent shall notify the office of the City Engineer when the grading operation is ready for each of the following inspections:

(a) When the permittee is ready to begin work, but before any grading or grubbing has started.

(b) Toe inspection: after the natural ground is exposed and prepared to receive fill, but before fill is placed.

(c) Excavation or fill inspection: after the excavation or fill has started, but before the vertical depth exceeds ten (10) feet.

(d) Drainage device inspection: after forms and pipe are in place, but before any concrete has been placed.

(e) Rough grading: when all rough grading has been placed.

(f) Final: when all work, including installation of all drainage structures, retaining walls and other protective devices, has been completed according to the approved plans.

(g) Other inspections. In addition to the called inspections specified above, the inspector may make any other inspections of any of the work to ensure compliance with the provisions of this chapter.

(5) If the inspector finds the soil or other conditions not as stated in the application for a ~~grading permit~~ Stormwater, Grading and Erosion Permit, he may refuse to approve further work until approval is obtained for a revised grading plan which will conform to the existing conditions.

#### § 211-10. Performance bond.

A. Before a ~~grading permit~~ Stormwater, Grading and Erosion Permit is issued, the permittee shall file with the City Engineer a performance bond for the benefit of the City. The bond shall be executed by the permittee and a corporate surety authorized to do business in this state as a surety in an amount sufficient to cover all work included on the approved plans and specifications.

B. In lieu of a surety bond, the applicant may file a cash bond with the City Engineer upon the same terms and conditions and in an amount equal to that which would be required in the surety bond.

C. Where grading is required on property adjacent to the grading site under permit, to complete a project satisfactorily, the owner of such adjacent property need not provide an additional grading bond if the original bond is of sufficient amount to include such additional grading. The permittee shall obtain all necessary easements when work is to be performed outside the project boundary.

D. Said performance bond shall among things cover the cost of any grading and landscaping to return the land to an approved condition, to cover the cost of replacing any trees that were to be saved as shown on the site plan and to cover any costs incurred by the City in cleaning the streets after the trucks hauling dirt, if this is not done to the City's satisfaction by the permittee.

E. Every bond shall be conditioned that the permittee shall:

(1) Comply with all the conditions of this chapter and all other applicable laws.

(2) Comply with all of the terms and conditions of the permit to the satisfaction of the City Engineer.

(3) Complete all of the work contemplated under the permit within the time limit specified in the permit. Upon application by the permittee, the City Engineer may, for sufficient cause, extend the time specified in the permit, but no such extension shall release any surety upon the bond.

F. Each surety bond shall be effective on the date of filing for the permit and shall remain in effect until the completion of the work to the satisfaction of the City Engineer. Such satisfactory completion shall be evidenced by written notice, signed by the City Engineer. In the event of

failure to complete the work and failure to comply with all of the conditions and terms of the permit, the City Engineer may order the work to be completed as required under the permit and to his satisfaction. The surety executing such bond, or such deposit, shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred or expended by the City in causing any and all of such required work to be done, and that said surety or the depositor assents to any lawful extension of time within which to construct and complete such work. In the case of a cash bond, the deposit or any unused portion thereof shall be refunded to the permittee upon the issuance of a notice of completion.

G. The amount of the bond shall be based upon the number of cubic yards of material in either excavation or fill, whichever is lesser, as described in the following table:

<b>Quantity of Fill or Excavation Material (which-ever is lesser) (cubic yards)</b>	<b>+</b>	<b>Difference Between Fill (per cubic yard)</b>	<b>+</b>	<b>Retaining Walls and Drainage Structures</b>	<b>= Total</b>
0 to 10,000		\$1.50		Estimate submitted on	
\$1.00 per cubic yard				a linear foot basis	
10,001 to 100,000		\$0.75		for pipe or cubic yard	
\$0.75 per cubic yard				basis for concrete	
Over 100,000:					
submit contractor's estimates for the total job					

#### § 211-11. Fees.

~~A. Before issuing any grading permit, the City Engineer shall collect a fee, the amount of which shall be as shown in the following table:~~

#### **Grading Permit Fees**

~~The following quantities shall be based on the total amount of cuts or fills, whichever is larger:~~

#### **Cubic Yards**

~~50 to 100~~

~~101 to 1,000~~

~~1,001 to 10,000~~

~~Over 10,000~~

~~B. The City Engineer may, at his discretion, refer the applicant to an authorized representative of the City Engineer for plan checking and inspection. All fees for these services shall be borne by the applicant and will be substituted for the grading permit fees listed above.~~

#### Article II. Excavations and Fills

#### § 211-12. General.

A. All grading shall be performed in accordance with the provisions of this chapter and with all rules and regulations established by the City Engineer and shall be in accordance with the zoning and subdivision regulations and the approved Master Plan for the area in which the grading is to be done.

B. Property lines shall not be located midway between top and bottom of cut or fill slopes when the slope is greater than fifteen percent (15%).

C. No person shall conduct any grading, excavation or filling, including the export or import of earth material, between the hours of 5:00 p.m. and 7:00 a.m. on any day nor on Sunday at any time.

#### § 211-13. Safety.

A. If at any stage of work on an excavation or fill the City Engineer determines, by inspection, that further work as authorized by an existing permit is likely to endanger any property or public

way, he may require, as a condition to allow the work to continue, that plans for such work be amended to include adequate safety precautions. Safety precautions may include, but shall not be limited to, specifying a flatter exposed slope or construction of additional drainage facilities, berms, terracing, compaction, cribbing, retaining walls or buttress fills, slough walls, desilting basins, check dams, benching, pavement, revetments or diversion walls.

B. No person shall excavate or fill so as to cause falling rocks, soil or debris in any form to fall, slide or flow onto adjoining properties.

C. The City Engineer may impose such regulations with respect to access routes to or from grading sites as he shall determine are required in the interest of the public health, safety and welfare, and safety precautions involving pedestrian or vehicular traffic. Traffic control devices, including flagmen, lights, signs and markers, shall be used at appropriate places along the designated routes of access to the site; temporary no-parking restrictions may be imposed with the approval of the City along such routes when determined necessary. The City Engineer may designate the routes of ingress and egress to or from a grading site when it is determined that such is necessary in the interest of the public health, safety and welfare. Such designation of routes shall in all cases take into consideration the most practical means of transporting the earth materials to or from the grading site consonant with the safety and welfare of residents along the routes.

D. All loads shall be properly trimmed and watered, or otherwise secured so as to prevent spillage from the equipment. The permittee shall be responsible for the removal of all spilled material along the access routes during the performance of the work specified in the permit.

#### § 211-14. Excavations.

A. No cut slopes shall exceed a vertical height of one hundred (100) feet unless horizontal benches with a minimum width of thirty (30) feet are installed at each one hundred (100) feet of vertical height.

B. No excavation shall be made with a cut face steeper in slope than two (2) horizontal to one (1) vertical unless a soil report is submitted by a licensed soils engineer showing, through subsurface exploration, that the material making up the slope of the excavation and the underlying bedrock is capable of standing on a steeper slope.

(1) No slopes shall be cut steeper than the bedding planes in any formation where the cut slope will lie on the dip side of the strike line.

(2) Where the excavation exposes strata above the top of the cut which will permit the entry of water along bedding planes, this area shall be sealed with a compacted soil blanket having a minimum thickness of two (2) feet. This soil shall be relatively impervious and shall be approved by the soils engineer and the City Engineer before placement.

(3) If the material of the slope is of such composition and character as to be unstable under the anticipated maximum moisture content, the slope angle shall be reduced to a stable value. This requirement shall be confirmed by the soils engineer's written certification following laboratory testing.

C. Paved interceptor benches on cut slopes shall have a minimum width of eight (8) feet and shall be spaced at intervals of twenty-five (25) feet measured vertically. The longitudinal slope of interceptor benches shall be not less than three percent (3%) nor more than eight percent (8%). Any change in rate of grade within these allowable slopes shall increase the grade in the direction of flow. A single run of an interceptor bench shall not exceed one hundred fifty (150) feet to a catch basin. The design of catch basins, inlet and outlet structures shall be shown on the plans.

D. Berms shall be constructed at the top of all cut slopes.

E. Finished ground shall slope a minimum of two percent (2%) from any building to an approved drainage device. The drainage system shall be an adequately designed collection system of catch basins and drain lines which conduct the water to its natural point of discharge. All systems shall be designed to carry the tributary flow from a ten-year storm, unless the City Engineer requires a design storm of lesser frequency to be in the best interest of the public safety. Twelve-inch diameter shall be the smallest acceptable pipe diameter in these systems. Sump area inlet capacities shall be designed for a storm of fifty-year frequency. All other inlets shall be designed on the ten-year storm frequency.

§ 211-15. Fills.

A. No fill slope shall exceed a vertical height of one hundred (100) feet unless horizontal benches with a minimum width of thirty (30) feet are installed at each one hundred (100) feet of vertical height.

B. No fill shall be made that creates an exposed surface steeper in slope than two (2) horizontal to one (1) vertical unless a soil report is submitted by a licensed soils engineer showing, through subsurface exploration, that the material making up the fill and the underlying bedrock is capable of standing on a steeper slope.

C. Interceptor paved terraces on fill slopes shall have a minimum width of eight (8) feet and shall be spaced at intervals of twenty-five (25) feet measured vertically. The longitudinal slope of interceptor benches shall be a minimum of three percent (3%) and a maximum of eight percent (8%). Any change in the rate of grade within these allowable slopes shall increase the grade in the direction of flow. A single run of an interceptor bench shall not exceed one hundred fifty (150) feet to a catch basin. The design of the catch basins, inlet and outlet structures shall be shown on the plans.

D. All man-made fills shall be compacted to a minimum of ninety-percent relative compaction as determined by ASTM Method D 1557-64T. If the required degree of compaction cannot be attained on sloped surfaces, the slope shall be cut back until the compacted inner core is exposed. Fills which do not exceed twelve (12) inches in depth need not be compacted but such fills shall not change the existing drainage pattern. Every man-made fill shall be tested for relative compaction by a soil testing agency. The results of the tests shall be certified by this agency and submitted to the City Engineer before the fill can be approved.

E. The toe of fill slopes shall not be made nearer to a property line than one-half (1/2) the height of the fill.

F. Fill shall not be placed on slopes exceeding one (1) vertical to ten (10) horizontal. In these areas, existing slopes must be benched prior to the placement of fills.

G. Berms shall be constructed at the top of all fill slopes.

H. All fills shall be underdrained.

I. Finished ground shall slope a minimum of two percent (2%) from any building to an approved drainage device. The drainage system shall be an adequately designed collection system of catch basins and drain lines which conduct the water to its natural point of discharge. All systems shall be designed to carry the tributary flow from a ten-year storm, unless the City Engineer requires a design storm of lesser frequency, to be in the best interest of the public safety. Twelve-inch diameter shall be the smallest acceptable pipe diameter in these systems. Sump area inlet capacities shall be designed for a storm of fifty-year frequency. All other inlets shall be designed on the ten-year storm frequency.

J. Special drainage systems other than described under Subsection I have to be submitted in details prepared by a licensed professional engineer and substantiated by a soils engineer's recommendations.

§ 211-16. Combined cut and fill.

Where a combined cut and fill slope exceeds twenty-five (25) feet in height, the required drainage bench shall be placed at the top of the cut slope. The effect of surcharge of the fill material on the cut sections shall be investigated by a soils engineer and a report shall be submitted to the City Engineer with the application.

§ 211-17. Construction limitations.

A. Buildings shall be located clear of the toe of all cut or fill slopes a minimum of one-half (1/2) of the height of the slope.

B. Where a fill exceeds one hundred (100) feet in vertical height, no building or permanent structure shall be built on such fill within seven (7) years from the completion of the fill.

C. If buttress fills are to be used for lateral support of unstabilized material, the design and calculations must be submitted by a licensed engineer along with the soils report on the foundation soil. All buttress fills shall be completely underdrained. The exposed surface shall not have a slope exceeding one (1) vertical to two (2) horizontal.

D. Areas tributary to a specific point of discharge shall not be altered so that stormwater is diverted to a different drainage area.

E. Relocation of natural watercourses or fills placed over natural watercourses will be permitted only if the stream is totally enclosed in a conduit designed to carry the tributary flow from a storm of fifty-year frequency.

§ 211-18. Erosion control.

A. All fill and cut slopes which are determined to be subject to erosion shall be planted with an approved grass seed or ground cover, irrigated and maintained by the owner. No portion of the performance bond being held for planting will be released until a stand of grass or ground cover is growing. When slope heights exceed twenty (20) feet, approved shrubs having a minimum one-gallon size shall be planted at ten (10) feet on center in both directions or trees planted at twenty (20) feet on center, if approved by the City Engineer.

B. When project work must be suspended for a period of thirty (30) days or longer, existing slopes and areas stripped of plant growth shall be seeded with a fast-growing seed to help control erosion before expiration of the work. Earthen ditches subject to erosion shall be equipped with temporary energy dissipating devices to minimize the effects of the flowing water.

C. Drainage devices discharging into natural watercourses shall be equipped with properly designed energy dissipators which maintain a discharge velocity not larger than the velocity in the natural watercourse at mean flow condition.

Article III. Mining Operations

§ 211-19. Purpose.

For the purpose of promoting the safety, health and general welfare of the residents of the City of Albany, it is hereby declared to be the policy of the City to prevent all manner of commercial excavations which create a danger to health and life caused by steep slopes, deep excavations remaining in the ground, exposure of the bare earth to wind action, erosion by surface water drainage, the creation of pools of water and excavation operations which create dangerous dust or mud conditions.

§ 211-20. Application for permit.



Before any excavation is commenced or continued for any purpose, the owner, lessee, or agent of the premises shall obtain a written permit therefor from the City Engineer. A mining operation shall be considered minor in nature when the total area to be mined on a specified parcel of land does not exceed one acre and the depth of excavation does not exceed ten (10) feet. All other mining operations shall be considered as major operations. Grading operations not included in either of these categories shall be subject to the provisions of Articles [I](#) and [II](#) of this chapter.

[A.](#) Permit for minor operation. The applicant shall file with the City Engineer a statement of the nature and extent of the work proposed to be done, including a sketch of the area to be affected, the kinds of materials to be removed, structures to be erected, if any, the manner in which it is proposed to do the work, and the period of time required to do such work. The number and type of trucks and other machinery to be used on the site shall be listed.

[B.](#) Permit for major operation. The applicant shall file with the City Engineer a detailed statement of the proposed work, together with a plan prepared by a duly licensed engineer or land surveyor of the State of New York setting forth in detail the following information:

[\(1\)](#) A detailed statement of the nature and extent of the work proposed to be done, including the number of acres to be affected, the kinds of materials to be removed, structures to be erected, if any, the manner in which it is proposed to do the work and the period of time required to do such work. The number and types of trucks and other machinery to be used on the site shall be listed.

[\(2\)](#) An area map drawn to a scale of not larger than one (1) inch to eight hundred (800) feet showing all land proposed to be mined, all contiguous land which is or has been used by the owner or applicant for mining or other related uses, all lands within two thousand (2,000) feet of the proposed mining area, including all public lands, and all public and private roads with the access roads to the property designated as such. Site plan at a scale of not larger than one (1) inch to one hundred (100) feet showing boundary of the entire planned mining area by courses and distances, site topography and natural features at a two-foot contour interval to include the location of watercourses within the mining area and two hundred (200) feet from the boundary of the project. The names of all adjoining property owners and existing structures should also be indicated. Test borings shall be taken within the planned mining area and their locations shown on the site plan. The written soils report shall be submitted with the application. Groundwater elevations at the borings will be indicated on the map as well as the average thickness of the overburden. If the mining is planned to be executed in phases, the limits of each phase should be indicated along with the anticipated time of completion. A rehabilitation plan showing both existing and proposed final contours after operations are completed shall be submitted.

[C.](#) The site plan shall be reviewed by the City Engineer and the site inspected by him or his authorized representative prior to the issuance of any permit.

#### [§ 211-21. Limitation on excavations.](#)

[A.](#) No pit or bank excavation shall be made within 50 feet of the outside property line of the area affected by the permit application.

[B.](#) Where any open excavation will have a depth of 10 feet or more and a slope greater than one vertical on two horizontal there shall be a fence of a height of six feet, with suitable gates where necessary, effectively blocking access to the area in which such excavation is located. Such fence shall be located 50 feet or more from the edge of the excavation.

[C.](#) Bank excavation will be permitted within 200 feet of a public roadway when the depth of excavation does not go below the elevation of the road.

[D.](#) The slope of material in any excavation shall not exceed the normal angle of repose or 45°, whichever is lesser.

E. Access roads shall be paved or treated to protect the surrounding areas from windblown sand or dust.

F. At all stages of the operation, proper drainage shall be provided to prevent the collection and stagnation of water and prevent harmful effects on surrounding properties.

G. After any such operation the site shall be made reusable for a use permitted in the district. Where topsoil is removed, sufficient arable soil shall be respread over the premises after the operation. The area shall be brought to final grade by a layer of earth three inches in depth capable of supporting vegetation. Fill shall be of suitable material approved by the City Engineer and shall be placed as described in Article II of this chapter.

H. The applicant is responsible for material spilled or tracked onto public roads and will be required to clean such streets using a combination of mechanical vehicles and hand labor as may be necessary to perform the required cleaning to the satisfaction of the City Engineer.

I. The applicant shall load his trucks carefully to minimize spillage.

#### § 211-22. Permit issuance.

A. At the time site plan approval is granted, the City Engineer may, at his discretion, require that the applicant post a bond in the amount to be determined by him sufficient to secure the rehabilitation of the site in accordance with the approved site plan. Such bond shall be approved by the City Engineer as to form, sufficiency and manner of execution and shall run for the same term as the term of the site plan approval.

B. If on-site mining or processing operations are not carried out for one year according to the operational plan described in § 211-20A or B, the same will be considered to have been abandoned, and, prior to any further excavation, a new permit will be required.

C. Permits shall be issued for a period of up to two years. Should excavation and processing continue beyond this time limit, review of the original application and compliance with the same will be considered by the City Engineer before issuance of another permit. Minor operations shall be permitted to continue beyond the one-acre limitation if areas previously excavated are restored as described in § 211-21G.

D. The applicant shall pay a fee of \$35 for a minor operation or a fee of \$250 for a major operation before any permit or renewal thereof may be issued.

#### § 211-23. Waiver of requirements.

The City Engineer reserves the right to waive any of the above requirements or require additional restrictions if, in his judgment, the safety and best interests of the people of the City of Albany will be protected by such adjustments.

#### § 211-24. Enforcement.

The City Engineer may cancel the permit for mining if there is any violation of the above regulations. If such an action is taken, the applicant immediately forfeits the performance bond for rehabilitation of the site.

#### § 211-25. Separability.

If any clause, sentence, paragraph, section or part of these regulations shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

#### § 211-26. Prior inconsistent ordinance.

This chapter shall supersede any existing ordinance theretofore enacted which is in conflict with or contrary to the provisions of this chapter.

#### § 211-27. Diagrams.

A. Diagrams for interceptor terrace and horizontal bench, interceptor terrace and down-drain detail attached hereto as Appendix 1, 2 and 3, respectively, are made part hereof.

B. Forms for application for minor commercial mining operations, major commercial mining operations and ~~grading permit~~ Stormwater, Grading and Erosion Permit attached as Appendix 4, 5 and 6, respectively, are made part hereof.

#### Article IV. Penalties

##### § 211-28. Penalties for offenses.

A. ~~Any person, firm, partnership, corporation or other entity who or which commences or performs any grading, excavation, filling or mining operations, including the export or import of any earth material to or from any grading or mining site, without first obtaining a permit as required by this chapter, shall be guilty of a violation and subject to a fine not to exceed \$250 for each such offense.~~

B. ~~Any person, firm, partnership, corporation or other entity who or which shall knowingly and willingly violate or assist in the violation of the provisions of this chapter or who or which fails to comply with a lawful directive from the City Engineer concerning the provisions of this chapter shall be guilty of a violation and subject to a fine not to exceed \$250 for each such offense.~~

#### Article V. Environmental Review

##### § 211-29. Procedure.

Every application for a permit under this chapter shall include a properly prepared long-form environmental assessment form (EAF), which shall be reviewed by the City Engineer and referred by him, if appropriate, to the City Environmental Quality Review Board and/or site plan review agency for further review and recommendation.

**Section 9. Chapter 231 of the Code of the City of Albany (Housing) is amended as follows:**

#### Chapter 231. Housing

##### Part 2. Housing Code

#### Article VI. Property Maintenance

##### § 231-92. Buildings and structures.

A. Subject to the provisions of Subsection B hereof, exterior surfaces of buildings and structures not inherently resistant to deterioration by the natural elements shall be periodically treated by appropriate means and materials suitable for preservation of said exterior. Accessory structures shall be maintained so as to be free of conditions detrimental to safety and health.

B. Notwithstanding the provisions of Subsection A, the brick or stone exterior of any building or structure shall not be treated or cleaned by sandblasting, wire brushing by machine or any other procedure or process whereby sand, grit or other abrasive is used or applied by pressure alone or with other ingredients or solution to effect the removal of dirt, soot, paint or other matter or substance therefrom; except that paint or other matter deleterious to the structural and/or aesthetic integrity of the exterior of any building may, upon permission of the Commissioner of Buildings, be removed by such abrasive or pressure methods. In granting such permission, the Commissioner shall determine and consider the machinery, equipment, materials, supplies, manner and method of cleaning proposed, the age, structural composition and general condition of the building involved, the nature of the material sought to be removed and the practical

necessity thereof, together with any other factors and/or circumstances that may, on a case-by-case basis, be deemed relevant. The above exception shall not apply to those buildings:

(1) Under the jurisdiction of the ~~Capitol Hill Architectural Review~~ Historic Resources Commission.

(2) Listed on the National Register of Historic Places.

(3) ~~Under the jurisdiction of the Historic Sites Commission.~~

(4) (3) Otherwise specifically designated historically or architecturally significant.

## **Section 10. Chapter 303 of the Code of the City of Albany (Sidewalks and Outdoor Cafés) is amended as follows:**

### **Chapter 303. Sidewalk and Outdoor Cafes**

#### **§ 303-1. Purpose and intent.**

The sidewalk and outdoor cafe regulations as set forth in this chapter are designed to permit those cafes in areas where they are appropriate and to promote and protect the public health, safety and general welfare. Specific purposes of this legislation are:

A. To ensure adequate space for pedestrians on the sidewalk adjacent to sidewalk and outdoor cafes.

B. To preserve and enhance the character of neighborhoods through the City and to protect the adjacent residential areas.

C. To simplify administrative and strengthen enforcement procedures for sidewalk and outdoor cafes that are effective, efficient and enforceable.

D. To promote the most desirable use of land and to provide compensation to the City for use of City-owned land for sidewalk cafe purposes.

#### **§ 303-2. Title.**

This chapter shall be known as the "Sidewalk and Outdoor Cafe Ordinance."

#### **§ 303-3. Definitions.**

For the purposes of this chapter, the following terms shall include each of the meanings set forth:

#### **NONRESIDENTIAL DISTRICTS**

Those areas of the City of Albany designated by the ~~Zoning Map, § 375-5, Article II, of Chapter 375, Zoning, as C-2, C-3, C-PB, C-M, M-1 and NBC/O~~ MU-CU, MU-CH, MU-CL, MU-DT, MU-FC, MU-FW, I-2 and I-2.

#### **OUTDOOR CAFE**

Those exterior facilities adjacent to and a part of establishments selling food and/or drink, entirely located on private property, open to the elements except for awnings and/or low walls or fences, temporary or permanent in nature, such as rooftop cafes and those at street level not using any City-owned property.

#### **PERMIT**

Written authorization issued by the ~~City Clerk~~ Director of Planning pursuant to this chapter permitting the operation of either a sidewalk or outdoor cafe.

#### **RESIDENTIAL/MIXED-USE DISTRICTS**

Those areas of the City of Albany designated by the ~~Zoning Map, § 375-5, Article II, of Chapter 375, Zoning, as R-1, R-2, R-3, R-3(H), R-4, R-O, C-O, C-O(M), C-R, C-1, NBR/NC~~ R-1L, R-1M, R-2, R-T, R-M, R-V, MU-NE, MU-NC, MU-FS and MU-FM.

#### **SIDEWALK CAFE**

Those exterior facilities adjacent to and a part of establishments selling food and/or drink that require the use of some City-owned property for operation, are temporary in nature and open to the elements except for optional awnings and/or temporary low walls or fences.

§ 303-4. Permit required; restrictions.

A. No sidewalk or outdoor cafe shall be allowed to operate in any outdoor area unless a permit has been obtained from the ~~City Clerk~~ Director of Planning.

B. Any request for the use of such an area for such purpose shall be made in writing to the ~~City Clerk~~ Director of Planning, in the form of a permit application.

§ 303-5. Rules and regulations.

The ~~City Clerk~~ Director of Planning shall establish rules and regulations necessary to carry out the purposes of this chapter.

§ 303-6. Application for permit.

A. Any request or application for a permit to operate a sidewalk or outdoor cafe shall be made to the ~~City Clerk~~ Director of Planning or his or her designated agent, in writing, on the application form provided by the ~~City Clerk~~ Director of Planning's office for this purpose. Where construction or alterations are anticipated, the applicant for an outdoor cafe must also submit a building permit application which will be reviewed for compliance with the State Building Code and City Zoning Requirements.

~~B. The request/application shall include:~~

~~(1) The name, address and telephone number of the applicant.~~

~~(2) The name, address and telephone number of the restaurant to be the subject of the application.~~

~~(3) The days and hours for which the permit is requested.~~

~~(4) Whether alcoholic beverages are to be served.~~

~~(5) The number of tables and chairs desired for this area and a rendering of positions of tables relative to entrances, exits and the sidewalk.~~

~~(6) A description of facilities and equipment to be used, including whether live or mechanically reproduced music is to be played and the other devices needed for amplification of sound, when applicable.~~

~~(7) A site plan, drawn to scale, showing proper clearance around ingress and egress to building and to fire safeguards; also proper amount of clearance on sidewalk for pedestrian traffic.~~

~~(8) Proof of insurance, in amounts required by the City Clerk.~~

~~(9) An indication of all fixtures such as fencing, decking or planters to be used and an indication of whether or not they will be removed when the cafe is closed. All fixtures related to sidewalk cafes must be temporary and shall not be affixed to City-owned property in any manner.~~

~~(10) A survey map indicating property lines and that property which is owned by the applicant and that which is City-owned.~~

~~(11) Any other information that the City Clerk may find reasonably necessary for the fair determination as to whether a permit should be issued.~~

§ 303-7. Standards for issuance of permit.

A. The ~~City Clerk~~ Director of Planning shall issue a permit upon a finding that:

(1) The proposed sidewalk or outdoor cafe will not unreasonably interfere with the pedestrian traffic or use of the City-owned portion of property to be used.

(2) The applicant has met all other applicable provisions in this chapter and those in the Building Code, the Zoning Unified Sustainable Development Ordinance and, if located in an historic district, the Historic Resources Commission Ordinance.

B. Notwithstanding the foregoing, the ~~City Clerk~~ Director of Planning may deny a permit upon a finding that:

(1) The use of the sidewalk or outdoor cafe has resulted in violations of any applicable rule, regulation, ordinance, local law or statute during the 12 months preceding the application.

(2) The proposed sidewalk or outdoor cafe will have an undue adverse effect upon nearby property, the character of the neighborhood, traffic conditions, parking or other matters affecting the public health, safety, welfare or convenience.

C. The ~~City Clerk~~ Director of Planning may hold an administrative hearing with the applicant for a permit and any other interested persons to assist in making such a determination. Such hearing shall be upon notice to Corporation Counsel; ~~the Division of Building and Codes~~; the Departments of Buildings and Regulatory Compliance, Engineering, Development and Planning, Fire, Police, Traffic Engineering; the Alderperson representing the area in which the proposed cafe is to be located; and the neighborhood association, if any, whose contact person and boundary descriptions are on file with the ~~City Clerk~~ Director of Planning.

§ 303-8. Effect of permit.

A permit holder shall be bound by all applicable rules, regulations, ordinances, local laws and statutes. The permit may be conditioned on modifications or restrictions intended to ensure compliance with the provisions of § **303-7** and the general protection of the health, safety and welfare of the citizenry.

§ 303-9. Fees.

The fee for processing the application for a sidewalk or outdoor cafe permit shall be:

A. Application fee for sidewalk or outdoor cafe: \$50.

B. Usage fee for sidewalk café:

<b>Area (square feet)</b>	<b>Fee</b>
1 to 100	\$50
101 to 200	\$150
201 to 300	\$200
301 to 400	\$250
401 to 500	\$300
501 to 600	\$350
601 to 700	\$400
701 to 800	\$450
801 to 900	\$500
901 to 1,000	\$550

§ 303-10. Liability of permit holder; insurance.

The person or persons to whom a permit is issued shall be liable and shall indemnify the City for any loss, damage or injury sustained by any person whatever by reason of the negligence of the person or persons to whom the permit shall have been issued. The applicant for a permit shall present to the City a certificate of insurance, naming the City of Albany as additional insured, prior to the issuance of the permit, in the amounts specified by the ~~City Clerk~~ Director of Planning. The ~~City Clerk~~ Director of Planning may, in his or her discretion, waive the requirement for insurance when circumstances warrant.

§ 303-11. Revocation of permit and enforcement.



A. The ~~City Clerk~~ Director of Planning, with the assistance of the ~~Division of Building and Codes~~ Department of Buildings and Regulatory Compliance, the Albany Police Department and the Department of ~~Development and Planning and Development~~, shall be responsible for monitoring and enforcing compliance with the terms of this chapter and applicable rules and regulations. In so doing, the ~~City Clerk~~ Director of Planning may hold an administrative hearing with the applicant for a permit and any other interested persons. Such hearing shall be upon notice to the Corporation Counsel; ~~the Division of Building and Codes~~; the Departments of Buildings and Regulatory Compliance, Engineering, ~~Development and Planning~~, Fire, Police, Traffic Engineering; the Alderperson representing the area in which the proposed cafe is to be located; and the neighborhood association, if any, whose contact person and boundary descriptions are on file with the ~~City Clerk~~ Director of Planning.

B. The ~~Division of Building and Codes~~ Department of Buildings and Regulatory Compliance or Albany Police Department, upon inspection and discovery of a violation of this chapter or other applicable rule, regulation, ordinance, local law or statute, may immediately cause the offending cafe to be cleared of patrons.

C. The Division of Building and Codes, Albany Police Department or the Department of Development and Planning shall, upon the discovery of a violation of this chapter or other applicable rule, regulation, ordinance, local law or statute, notify the ~~City Clerk~~ Director of Planning of such violation.

D. Upon a finding of such violation of this chapter or other applicable rule, regulation, ordinance, local law or statute, or upon other good cause shown, the ~~City Clerk~~ Director of Planning may revoke a permit or levy penalties pursuant to § 303-20 of this chapter.

§ 303-12. Appeal from denial, revocation or issuance of permit.

Appeals from the issuance, denial, revocation or other condition of a permit may be taken to the Board of Zoning Appeals, by any aggrieved person, within thirty (30) days from the date of the issuance, denial or revocation, by filing a written notice with the ~~City Clerk~~ Director of Planning on forms prescribed by the Board. Each appeal shall refer to the specific relevant provision of the ordinance, explain the aggrieved person's position with respect to the determination being appealed and state the relief requested. If the appeal is from a denial or revocation, it shall also state the reasons given for said denial or revocation.

§ 303-13. Procedures for ~~City Clerk~~ Director of Planning and Board.

Upon receipt of an appeal of a permit denial, revocation or issuance, the City Clerk shall transmit the appeal and all pertinent data and records to the Board, including his or her recommendations. The Board shall establish a reasonable time for the hearing of each appeal and give proper notice thereof. The Board shall decide the appeal within thirty (30) days of the hearing. At the hearing, any party may appear in person or be represented by an agent or attorney. The Board's decision shall be filed in writing with the ~~City Clerk~~ Director of Planning and Corporation Counsel. A copy shall be sent to the appellant.

§ 303-14. Notification of permit application/issuance; posting.

Upon receipt of a permit application, the ~~City Clerk~~ Director of Planning shall send a copy of the application to the Commissioner of Buildings, City Engineer, Director of Planning and Alderman of the ward in which the proposed sidewalk cafe would be located for their comments.

Comments and recommendations shall be accepted for a period of 14 days from date of distribution. Notice of permit issuance, with any conditions or restrictions attached, will be similarly distributed. The permit holder shall post the permit on the establishment so that it is visible from the street.

§ 303-15. Trash; condition of premises.

Property shall be cleaned and kept refuse-free, and no large containers for trash shall be placed on the cafe premises. At the expiration of the term of the permit, all City-owned property shall be delivered up to the City in good condition, damage by the elements excepted. Public property shall not be altered in any way during the term of the permit.

§ 303-16. Hours of operation.

A. Residential/mixed-use districts. Cafes located in residential/mixed-use districts shall be open for business not before 8:00 a.m. and shall close by 11:00 p.m.

B. Nonresidential districts. Cafes located in nonresidential zoning districts shall be open for business not before 8:00 a.m. and shall close by 2:00 a.m.

~~C. Notwithstanding Subsection A of this section, for the period ending April 28, 2013, sidewalk cafes located within the boundaries of the Lark Street Area Business Improvement District, as established in accordance with Article II of Chapter 142 of this Code, shall close by 12:00 midnight on Friday and Saturday, provided that the additional hour authorized by this subsection shall be limited to those sidewalk cafes, or parts thereof, which are in compliance with the provisions of this chapter; for which an application submitted with a site plan has been approved by the City Clerk in accordance with this chapter; and whose location is consistent with such approved application.~~

§ 303-17. Music; lighting; outdoor cooking.

A. Residential/mixed-use districts. Cafes located in residential/mixed-use districts shall not use music or noise amplification devices, and no music or entertainment of any type is permitted outdoors. Lighting shall be minimal. No outdoor cooking of any type is permitted in sidewalk or outdoor cafes.

B. Nonresidential districts. Cafes located in nonresidential zoning districts shall be allowed to provide music, so long as it is not of a type or volume as to violate any applicable law or ordinance such as the City's Noise Ordinance or create a nuisance to surrounding residents or property owners. Lighting shall be minimal. No outdoor cooking of any type is permitted in sidewalk or outdoor cafes.

§ 303-18. Fixtures; furnishings; signage.

In sidewalk cafes, all fixtures and furnishings must be of a temporary nature, capable of being brought in at closing time, and must be brought in and stored during nonoperational hours. No objects, except a retractable awning and lighting fixtures, may be permanently attached to the exterior. All planters, railings and fences must be temporary and not exceed a height of four feet. No additional signage shall be permitted to be affixed to a cafe's temporary structures or accessories. Outdoor cafes, those cafes operated entirely on private property, are excepted from the above requirements of this section; however, if either type of cafe is located in a historic district, additional requirements relative to signage and other exterior elements that are set forth in the Historic Resource Commission Ordinance are applicable.

§ 303-19. Clear paths.

For sidewalk cafes using City property for operation, there shall be a minimum of ~~five (5)~~ four (4) feet or fifty percent (50%) of the total sidewalk width for clearance, whichever is greater, to provide adequate and unobstructed pedestrian movement, such measurement being made from the outermost point of the cafe to the unobstructed inner edge of the curb, excluding brick or grass carpets, United States mailboxes, fire hydrants, bus shelters, street trees, etc. Where applicable, compliance with the ADA Standards for Accessible Design will be required. The actual amount of clearance space needed will be based upon two (2) factors: the location and the

volume of pedestrian traffic. A larger pedestrian right-of-way may be required based on the proposed location and the volume of pedestrian traffic experienced there.

§ 303-20. Penalties for offenses.

A person or entity found in violation of this chapter shall receive a letter stating the violation and pay a fine of \$150 for a first offense; shall receive a letter stating the violation, pay a fine of \$300 and have said permit suspended for 90 days for a second offense within three months of the first offense; and shall receive a letter stating the violation, pay a fine of \$500 and have said permit revoked for the remainder of the permit season or suspended for 120 days, whichever is greater, upon any subsequent offense after the second offense. Any fines levied shall be in addition to any other provisions for enforcement contained in this Code.

§ 303-21. Permit issuance, terms, renewals and expirations.

Permits shall be issued on or after May 1 of each year. All permits, regardless of when issued, shall expire on April 30. Applications for renewal of permits shall be made in the same manner as original applications. Permits are not assignable.

§ 303-22. Severability.

If any section, paragraph, subdivision, clause or provision of this chapter shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged, and the remainder of this chapter shall be deemed valid and effective.

**Section 11. Chapter 307 of the Code of the City of Albany (Signs) is repealed.**

**Section 12. Chapter 313 of the Code of the City of Albany (Solid Waste) is amended as follows:**

[Chapter 313. Solid Waste](#)

[Article VA. Notice of Violation](#)

[§ 313-51.1. Responsibility of property owners; action by City; costs of abatement; hearing.](#)

[G. Appeal.](#) Any person or persons aggrieved by a decision of the Commissioner or his designee may file an administrative appeal with the Board of Zoning Appeals in the manner prescribed in ~~Article IV of Chapter 375~~ of the Code of the City of Albany, and thereafter in accordance with the provisions of Article 78 of the New York Civil Practice Law and Rules.

**Section 13. Chapter 345 of the Code of the City of Albany (Trees and Vegetation) is amended as follows:**

[Chapter 345. Trees and Vegetation](#)

[Article I. Care of Trees and Shrubs](#)

[§ 345-1. Definitions.](#)

As used in this article, the following terms shall have the meanings indicated:

[CITY](#)

The City of Albany, situated in the County of Albany, New York.

[CLEAR-CUTTING](#)

The cutting or removal of trees or other vegetation where more than 50% of the existing trees or vegetation per acre is removed over any five-year cutting cycle.

[OWNER](#)

Includes the legal owner of real property fronting on any street of the City and any lessee of such owners.

#### PARK

Includes all public parks.

#### PARK TREES

Trees, shrubs, bushes and all other woody vegetation in public parks having individual names and all areas owned by the City or to which the public has free access as a park.

#### PERSON

Includes any individual, firm, association, corporation, public utility, partnership and the lessees, trustees, receivers, agents, servants, heirs, assigns and employees of any such person.

#### PUBLIC STREETS or STREETS

Includes all roads, streets, avenues, boulevards, alleys, parkways and public rights-of-way, or any portion thereof, located in the City.

#### STREET TREES

Trees, shrubs, bushes and all other woody vegetation on land lying between property lines on either side of all streets, avenues or ways within the City.

#### § 345-2. Administration.

The Department of General Services shall administer this article.

#### § 345-3. Powers and duties of administrative authority.

It shall be the responsibility of the Department to study, investigate, counsel and develop and/or update annually and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan will be presented annually to the Common Council and, upon its acceptance and approval, shall constitute the official Comprehensive City Tree Plan for the City of Albany. The Department, when requested by the Common Council, shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work.

#### § 345-4. Maintenance and removal of trees and shrubs within streets or public grounds.

A. The City shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, squares and public grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

B. The City may remove or cause or order to be removed any tree or part thereof which is in an unsafe condition or which, by reason of its nature, is injurious to sewers, electric power lines, gas lines, waterlines or other public improvements or is affected with any injurious fungus, insect or other pest.

#### § 345-5. Permit required.

A. It shall be unlawful and it is hereby prohibited for any person other than the Commissioner of the Department of General Services, Assistant Commissioner or his duly authorized agent to cut, trim, prune, spray, brace, plant, move, remove or replace any tree in any public street or public park within the City, or to cause the same to be done, unless and until a ~~written permit to do so~~ shall have been first obtained from the Commissioner of the Department of General Services. The applicant must obtain a permit from the Department of General Services, and the Commissioner must approve the suggested worker Tree and Vegetation Permit has first been obtained pursuant to Section 375-5(E)(11).

B. Said worker All persons performing any of the activities listed in subsection A above must follow standards promulgated by the U.S. Occupational Safety and Health Administration

(OSHA). Permit fees shall be promulgated by the Department of General Services. Any such permit may be declared void and a fine imposed by the Commissioner if its terms are violated.

B. Permitted work shall conform to the American National Standard for Arboricultural Operations - Pruning, Repairing, Maintaining, and Removing Trees, and Cutting Brush - Safety Requirements. A copy of said guidelines can be obtained from the Department of General Services.

C. Once a permit is granted, said person is required to have the vehicle and equipment that is used in conjunction with the permitted work marked with the name and telephone number of said person.

§ 345-6. Indemnification.

The person so issued a permit by the Commissioner of the Department of General Services under this article shall protect, indemnify and hold harmless the City of Albany from any and all claims that may arise or that may be made for damages, loss, injury or death resulting from the acts of said person.

§ 345-7. Topping of trees.

It shall be unlawful as a normal practice for any person, firm, public utility or City department to top any street tree, park tree or other tree on public property. "Topping" is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this article to the determination of the City.

§ 345-8. Climbing spurs or spiked shoes.

The use of climbing spurs or spiked shoes in the act of pruning trees is prohibited.

§ 345-9. Pruning to remove interference with streets or sidewalks.

The City shall prune the branches of any tree overhanging any street or right-of-way within the City so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight feet above the surface of the street or sidewalk. The City shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The City shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a streetlight or interferes with visibility of any traffic control device or sign.

§ 345-10. Removal of dead or diseased trees from private property.

The City shall have the right to cause the removal of any dead or diseased trees on private property within the City, when such trees constitute a hazard to life and property or harbor insects or disease which constitute a potential threat to other trees within the City. The City will notify, in writing, the owners of such trees. Removal shall be done by said owners at their own expense within 60 days after the date of service of notice. In the event of failure of the owners to comply with such provisions, the City shall have the authority to remove such trees and charge the cost of removal on the owner's property tax notice.

§ 345-11. Injury and damage prohibited.

It shall be unlawful for any person to break, injure, deface, mutilate, kill or destroy any tree or set fire or permit any fire to burn where such fire or the heat thereof will injure any portion of any tree in any public street or park in the City, nor shall any person, apply, attach or keep attached to any such tree, any wire, rope (other than one used to support a young or broken tree), sign, paint

or any other substance, structure, thing or device of any kind or nature whatsoever, without having first obtained a permit from the Department of General Services to do so.

[§ 345-12. Interference with City.](#)

It shall be unlawful for any person to prevent, delay or interfere with the City or any of its agents while engaging in and about the planting, cultivating, mulching, pruning, spraying or removing of any street trees, park trees or trees on private grounds, as authorized in this article.

[§ 345-13. Protection of trees during construction.](#)

Contractors occupying City streets for building purposes shall place such proper guards about all trees liable to injury as shall effectually protect them.

[§ 345-14. Public utilities.](#)

[A.](#) Any person doing business as a public utility subject to the jurisdiction of the Public Service Commission of the State of New York and any constituted public agency authorized to provide utility service shall be given a permit from the Commissioner of the Department of General Services, valid for one year from the date of issuance, permitting such person to trim, brace, remove or perform such other acts with respect to trees growing adjacent to the public streets of the City, or which grow upon private property to the extent that they encroach upon such public streets, as may be necessary to comply with the safety regulations of said Commission and as may be necessary to maintain the safe operation of its business. Such utility shall be held to comply with all regulations contained in this article.

[B.](#) Any public utility authorized to do work under this article shall give reasonable notice to any landowner whose property abuts the subject area, prior to the start of any permitted work.

[C.](#) No person shall apply, attach or keep attached to any tree, any wire, rope (other than one used to support a young or broken tree), sign, paint or any other substance, structure, thing or device of any kind or nature whatsoever, without having first obtained a permit from the Department of General Services to do so.

[§ 345-15. Safe pedestrian travel.](#)

At all times, persons covered under this article shall maintain a safe pedestrian environment, allowing for safe pedestrian access through and/or around the affected area for the public at large.

[§ 345-16. Standards of workmanship for pruning and removal.](#)

[A.](#) Cleanup of branches, logs or any other debris resulting from any tree pruning or removing shall be promptly and properly accomplished. The work area shall be kept safe at all times until the cleanup operation is completed. Under no condition shall the accumulation of brush, branches, logs or other debris be allowed upon a public property in such a manner as to result in a public hazard.

[B.](#) Under no condition shall it be considered proper to leave any severed or partially cut branches in the upper portion of any tree being worked on after the tree workers leave the scene of the operation.

[C.](#) Whenever large tree sections are being cut in a treetop that may endanger the public or property, such sections shall be secured by ropes and lowered safely in a controlled manner.

[D.](#) Unless the tree work area is totally barricaded or otherwise kept safe while pruning or removing trees, at least one responsible tree worker shall serve to coordinate safe operations on the ground at all times when work operations are in progress.

[§ 345-17. Planting of trees along private property.](#)

Owners desiring to have trees planted along their property shall submit to the Commissioner of the Department of General Services a tree request form with a check payable to the City



Treasurer for 1/2 the cost of the tree. The Commissioner of the Department of General Services reserves the right to make a final designation of kind or species of tree and the location where the same is to be planted. It shall be the responsibility of the owner to maintain the tree in accordance with this article.

§ 345-18. Site plan review required for clear-cutting.

A. On all parcels in the City of Albany in excess of one acre in size, no clear-cutting shall be permitted without the approval of ~~the Planning Board of the City of Albany by the process known as "site plan review."~~ a major development plan pursuant to Section 375-5(E)(14).

B. ~~In conducting site plan review of a proposed clear-cutting, the Planning Board shall consider whether:~~

~~(1) The clear-cutting is for a recognized silvicultural purpose.~~

~~(2) There are adequate buffers on the shorelines of lakes, ponds, rivers or streams; along major travel corridors; and, if necessary, along property boundaries around dwellings on adjacent lands, so as to preserve water quality and visual quality, to control noise and to prevent drainage or erosion problems.~~

~~(3) Habitats of rare and endangered species and other key wildlife habitats will be protected.~~

~~(4) Regeneration of timber is assured.~~

~~(5) If proposed and if allowed by the Board, any use of pesticides and herbicides will be strictly controlled.~~

~~(6) Harvest will be controlled by qualified personnel by contract, marked stand, direct supervision or other adequate means.~~

~~(7) Wood roads and skid trails will be located and equipment will be operated so as to minimize erosion on slopes and elsewhere.~~

~~(8) The storage, mixing or bulk handling of fuel, chemicals or other hazardous materials will be strictly controlled.~~

~~(9) The Timber Harvesting Guidelines for New York (New York Section of the Society of American Foresters, June 1975) will be adhered to.~~

§ 345-19. Penalties for offenses.

A. Any person offending or violating any of the above rules and regulations for the planting, protection and care of trees and shrubs shall be guilty of a violation, and a stop-work order shall be issued until said violation is rectified. An administrative surcharge of \$75 will be charged for the lifting of said stop-work order.

B. Any and all persons found guilty of a violation shall be liable to a fine which shall not exceed \$500 in amount or to imprisonment not to exceed 15 days, or both, in the discretion of the court. In the case of an unlawful clear-cutting, a fine not to exceed \$500 per acre affected or imprisonment not to exceed 15 days, or both, may, in the discretion of the court, be imposed. In addition, any and all persons found guilty of a violation shall be liable to the City of Albany for restitution in the amount of \$125 per inch of diameter of said damaged or destroyed tree(s).

C. Except as provided otherwise by law, such violation shall not be a crime, and the penalty or punishment therefor shall not be deemed, for any purpose, a penal or criminal penalty or punishment and shall not impose any availability upon or affect or impair the credibility as a witness or otherwise of any person found guilty of such offense.

D. In addition, any person who removes a tree in any public street or park with or without a permit from the Commissioner of the Department of General Services, or who damages a tree such that it must be removed, is legally and financially responsible for replacement. The removed tree may be replaced with another of equal DBH (diameter breast height) or with two or

more trees such that the sum of the DBHs of the replacement trees equals or exceeds that of the removed tree. The Commissioner of the Department of General Services will designate the location of the replacement tree or trees, not necessarily in the same location as the removed tree.

[§ 345-20. Exemption.](#)

This article shall not apply to property owners and said property owners' manual trimming of tree branches which are located over public streets or sidewalks, said branches being three inches or less in diameter and no more than eight feet above the surface of the street or sidewalk.

[§ 345-21. Promulgation of rules and regulations.](#)

This article is further subject to § [323-75](#) of the Code of the City of Albany, stating that the Commissioner of the Department of General Services is hereby authorized to promulgate and amend a fee schedule and additional rules, regulations and specifications necessary to supplement and effectuate the purpose and intent of this article.

[§ 345-22. Severability.](#)

Should any section, clause or provisions of this article be declared by the courts to be invalid, the same shall not affect the validity of the article as a whole or parts thereof, other than the part so declared to be invalid.

[Article II. Community Gardens](#)

[§ 345-23. Purpose.](#)

This Common Council, recognizing the need for encouraging and promoting programs relating to conservation of natural and ecological resources and, by appropriate action, to coordinate the same to the current economic problems, does hereby determine the authority herein granted to be in the public interest; and that in furtherance of the aforesaid and in accordance with the General Municipal Law of the State of New York, this Council does herewith authorize the use of available unimproved lands owned by the City for the cultivation of the soil upon such lands for planting and maintaining gardens and growing food crops thereon.

[§ 345-24. Authorization to enter into agreement for services.](#)

The Mayor of the City of Albany is hereby authorized to enter into an agreement for ground preparation of approximately 500 gardens, seed purchases, gardening classes, food preparation and such other related services as may be required.

[§ 345-25. Promulgation of rules and regulations.](#)

Such rules and regulations as may be needed shall be promulgated and established for public guidance, including setting such fee as may be deemed necessary for the exclusive use of a designated plot of land for the purpose intended. Such fee shall entitle a resident to preparation of the plot for planting, seeds required for a basic garden, instruction by qualified personnel, etc.

**Section 14. Chapter 375 of the Code of the City of Albany (Zoning) and the Official Zoning Map are hereby repealed. A new Chapter 375 of the Code of the City of Albany (City of Albany Unified Sustainable Development Ordinance, also known as “USDO”) and Official Zoning Map are hereby enacted, and are described as follows:**

**Section 15. This Ordinance shall take effect thirty (30) days after its passage.**

**APPROVED AS TO FORM  
February 24, 2017**

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**First Assistant Corporation Counsel**

**TO:** Gerald Campbell, City Clerk  
**FROM:** , Council Member  
**RE:** Request for Common Council Legislation  
Supporting Memorandum  
**DATE:** February 24, 2017

**ORDINANCE NUMBER 26.31.17**

**TITLE:**

AN ORDINANCE REPEALING CHAPTER 20 OF THE CODE OF THE CITY OF ALBANY, AMENDING CHAPTER 42 OF THE CODE OF THE CITY OF ALBANY (DEPARTMENTS AND COMMISSIONS), AMENDING CHAPTER 111 OF THE CODE OF THE CITY OF ALBANY (AMUSEMENTS), AMENDING CHAPTER 133 OF THE CODE OF THE CITY OF ALBANY (BUILDING CONSTRUCTION), AMENDING CHAPTER 151 OF THE CODE OF THE CITY OF ALBANY (COMMERCIAL STANDARDS), AMENDING CHAPTER 181 OF THE CODE OF THE CITY OF ALBANY (ENVIRONMENTAL QUALITY REVIEW), AMENDING CHAPTER 197 OF THE CODE OF THE CITY OF ALBANY (FIRE PREVENTION), AMENDING CHAPTER 211 OF THE CODE OF THE CITY OF ALBANY (GRADING AND MINING), AMENDING CHAPTER 231 OF THE CODE OF THE CITY OF ALBANY (HOUSING), AMENDING CHAPTER 303 OF THE CODE OF THE CITY OF ALBANY (SIDEWALK AND OUTDOOR CAFES), REPEALING CHAPTER 307 OF THE CODE OF THE CITY OF ALBANY (SIGNS), AMENDING CHAPTER 313 OF THE CODE OF THE CITY OF ALBANY (SOLID WASTE), AMENDING CHAPTER 345 OF THE CODE OF THE CITY OF ALBANY (TREES AND VEGETATION), REPEALING CHAPTER 375 OF THE CODE OF THE CITY OF ALBANY (ZONING) AND REPEALING THE EXISTING CORRESPONDING ZONING MAP, AND ADOPTING A NEW CHAPTER 375 OF THE CODE OF THE CITY OF ALBANY (CITY OF ALBANY UNIFIED SUSTAINABLE DEVELOPMENT ORDINANCE) AND CORRESPONDING NEW ZONING MAP

**GENERAL PURPOSE OF LEGISLATION**

Creation of new zoning ordinance and map to be consistent with the City of Albany Comprehensive Plan; to promote economic reinvestment in the City; to protect and preserve the City's residential neighborhoods; to promote energy conservation and low impact development, and environmentally sensitive development; to secure safety from fire, floodwaters, panic and other dangers; to facilitate the provision of adequate transportations, water, sanitary and sewers, schools, parks and other community facilities to serve new and existing development; to promote, preserve, and encourage the aesthetic quality and reinforce the historic urban form and fabric of the City; and to promote the public health, safety and general welfare. Corresponding changes to existing chapters of the Albany City Code that relate to land use generally, and to the organizational structure of City Code Chapter 42 to include administrative bodies and officials referenced in other sections of the code.

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**NECESSITY FOR LEGISLATION AND ANY CHANGE TO EXISTING LAW**

Amendments regarding zoning must be approved by the Council.

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**FISCAL IMPACT(S)**

Unknown at this time.

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